

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





16-2055

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X

WARDEN, GREEN HAVEN STATE PRISON, :

Respondent-Appellant, :

-and- :

JONES, OSWALD, DOE, ROE, LUDWIG, :

MACKELL, et al., :

Defendants-Appellants, :

-against- :

THOMAS PALERMO and SHELDON SALTZMAN, :

Petitioners-Appellees. :

-----X

B  
P/S

APPENDIX FOR RESPONDENT-APPELLANT  
AND STATE DEFENDANTS-APPELLANTS

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PRO SE CIVIL DOCKET  
UNITED STATES DISTRICT COURT

JUDGE WEINER

JUDGE

Jury demand date:  
Deft O'Connors- 1-3-72.

70 CIV. 3705

D. C. Form No. 106 Rev

TITLE OF CASE

ATTORNEYS

For plaintiff:

THOMAS PALERMO & SHELDON SALTZMAN  
125 W 4th St.  
NYC, NY 10013

NANCY ROSENER

401 BROADWAY-NYC 10013

( for plttf. Thomas Palermo

Thomas Palermo & Sheldon Saltzman,

plaintiff

v.

Nelson A. Rockefeller; Russell Oswald;  
E.K. Jones; John Doe; Richard Roe, (Commissioners  
of Parole); Thomas Mackell; Fred Ludwig; Thomas  
Demas; Arthur A. Darrigrand; John A. Traistead;  
Mr. Ralph Dilorio; Peter T. Farrell; Michael Kern;  
John W. Lindsay; Howard Leary; John O'Connors;  
Nancy Rose, Esq.; Jacob Evseroff; Law Firm of  
Rein, Mound & Cotton; The Provident Loan Society  
The State of New York; The City of New York;  
Rein, Mound & Cotton; Rein, Mound & Cotton  
defendants & O'Connors

defendant:

J. Lee Rankin, Corporation (C  
Municipal Bldg. (for Linda  
O'Connors & City of N.Y.)

Evseroff, Newman & Sonenshi  
(for reupt. Evseroff)

168 Jordan St. Brooklyn  
DeForest & Duer (for Pr  
Loan Society) 20 Exchan  
NY 10005

Rein, Mound & Cotton (for Norma  
and Rein, Mound & Cotton) 56 Pr  
NY 10005, HA 5-9200

Louis J. Laskowitz, Esq.

Atty. General, State of New  
80 Centre St. NY 10013 L8

Place an (x) next to ONE, ONLY.

FOR DEFTS" Oswald, Jones, Doe, a

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	RFC.
J.S. 5 mailed <input checked="" type="checkbox"/>	Clerk	8/25/72	Ta Palermo	15 -
J.S. 6 mailed <input checked="" type="checkbox"/>	Marshal	8/28/72	US Treas	15 -
Basis of Action:	Docket fee			
Vio Constitutional Rights	Witness fees			
5,000.000				
Action arose at:	Depositions			

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## JUDGE GRIESA

70 CIV 8705

PAGE

DATE	PROCEEDINGS	Date Order Judgment No
Aug. 25-70	Filed complaint issued 20 day summons	
Sept. 16-70	Filed order extending certain defendants time to answer complaint to 9/18/70. Motley, J. (mailed notice).	
Sept. 26-70	Filed Order extending defendants time to answer complaint to 10/28/70. Wyatt, J.	
Oct. 2, 70	Filed plttf motion of motion. Re; Assignment of Counsel. Ret. 10-27-70	
Oct. 2, 70	Filed affidavit in support of motion.	
Oct. 6-70	Filed Notice of Motion re: Dismiss Action. Ret. 10/20/70.	Corp. Co
Oct. 9-70	Filed ANSWER of Jacob R. Everoff to complaint.	
Oct. 9-70	Filed Notice of Cross Motion to dismiss. Ret. 10/20/70. (deft. Everoff's motion) and Affidavit in answer to Deft. Everoff.	
Oct. 9-70	Filed Notice of Cross Motion to dismiss Ret. 10/20/70. (deft. Lindsay, Leary, O'Connor and The City of New York)	
Oct. 12-70	Filed Notice of Motion re: Dismiss Complaint Ret. 10/20/70.	GHM
Oct. 11-70	Filed Notice of Motion re: dismiss action as to deft. Provident Loan Society Ret. 10/20/70	DeF
Oct. 11-70	Filed Memorandum of Law of deft. Provident Loan Society of N.Y. in support of motion to dismiss.	
Oct. 16-70	Filed Notice of Motion re: Dismiss Complaint Ret. 10/27/70	LJL
Oct. 16-70	Filed Memorandum of Law for defts. Rockefeller, Oswald, Doe Roe, Mackell, Ludwig, Demaskos, Darrigrant, Braistead, DiLorio, Farrell, Kern and The State of N.Y.	
Oct. 29-70	Filed Notice of motion re: Dismiss complaint, together with affidavit in support.	RM&C
Oct. 29-70	Filed Memorandum of Law of defts. Norman S. Rein and Rein, Mound & Cotton in support of motion to dismiss.	
Nov. 2, 70	Filed summons with marshal's ret. Served The Law Firm of Rein, Cotton and Mound by Mr. E. Leiman on 10-15-70	
Nov. 9, 70	Filed summons with marshal's Ret. Served Nelson A. Rockefeller by Lawrence Monin on 9-1-70	
	Served Russell Oswald, Comm. NY State Parole by Gerald T. Houlihan on 9-1-70	
	Served E. J. Jones, Comm. of Parole NYS by Gerald T. Houlihan on 9-1-70	
	Served John Doe, Comm. of Parole by Gerald T. Houlihan on 9-1-70	
	Served Richard Roe, Comm. of Parole by Gerald T. Houlihan on 9-1-70	
	Served Arthur A. Darrigrant by personally on 9-9-70	
	Served Thomas YANK Mackell by Audrey Mantay on 10-1-70	
	Served Thomas De Maskos by Audrey Mantay on 10-1-70	
	Served Fred Ludwig by personally on 9-1-70	
	Served John A. Braistead by Ralph DiLorio on 9-1-70	
	Served Ralph DiLorio by personally on 9-1-70	
	Served Peter I. Farrell by clerk William Doherty on 10-1-70	
	Served Hon. Michael Kern by Richard De Ferck on 10-5-70	
	Capt John O'Connor's by Ptl Gabriel on 10-1-70	
	Served Jacob Everoff by personally on 10-5-70	
	Served John Vliet Lindsay by Cale Roberts on 9-9-70	
	Served Howard Leary by M.M. Sperber on 9-9-70	
	Served Norman Rein by personally on 9-10-70	
	Served The Provident Loan Society of N.Y. by Robert J. Schneider on 9-17-70	
	Hon. Louis J. Lefkowitz by Mortimer Sattler on 9-9-70	
	Served Hon. J. Lee Rankin, Corp. Counsel by Milton Weinberg on 9-9-70	
Jan. 15-71	Filed OPINION #37332. Mansfield, J. We grant the motions to dismiss as to the defendants State of New York, City of New York, Kern, Farrell, Lindsay, Leary, Rockefeller, Everoff, Rein, Rein, Mound & Cotton, Provident, Darrigrant, Mackell, Ludwig, Demaskos, Braistead and DiLorio without prejudice to plttf's filing an amended complaint within 30 days against such defts, if any, as to whom plttf. are advised, after consultation with the legal counsel, that a valid claim for relief can be stated. The motions of defts. Oswald, Jones, Doe, Roe, and O'Connor to dismiss the claims against them are hereby denied. So ordered. (mailed notice)	2



JUDGE GRIESA

D. C. 110 Rev. Civil Docket Continuation

## PROCEEDINGS

DATE	PROCEEDINGS
Jan. 18-71	Filed letter from petitioner requesting a 30-60 day continuance, addressed Judge Mansfield,
Jan 25, 71	Filed ANSWER of deft John O'Connors to the complaint.
Jan. 28-71	Filed ANSWER of defts. Russell Oswald, E.K. Jones, John Doe and Richard Roe to complaint.
Feb. 18-71	Filed "AMENDMENT" Complaint.
Mar. 1-71	Filed Affidavit of Asst. Attorney General in support of application to extend time to answer or move by 30 days.
Mar. 1-71	Filed ORDER extending defendants Rockefeller, Oswald, Jones Doe, Roe, Mackell, Ludwig, Lemskos, Barribrand, Craistead, Di Iorio, Farrell, Kern and of New York's time to answer amended complaint to 3/28/71. Frankel, J. (mailed notice).
Mar. 1-71	Filed Notice of Motion re: Dismiss Complaint. Ret. 3/30/71 (for defts).
Mar. 8-71	Filed ORDER extending time of Norman S. Rein and Rein, Mound & Cotton to answer or otherwise move with respect to amended complaint to 4/12/71. Bona (mailed notice).
Mar. 9-71	Filed Notice of Motion by deft. The Provident Loan Society of NY. re: Dismiss action. Ret. 3/30/71.
Mar. 9-71	Filed Memorandum of Law of deft. The Provident Loan Society in support of
Mar. 18-71	Filed Notice of Motion re: Dismiss amended complaint. Ret. 3/30/71.
Mar. 18-71	Filed Memorandum of Law for defts. Rockefeller, Oswald, Doe, etc.
Mar. 23-71	Filed Notice of Motion re: Jury Trial Ret. 3/30/71
Mar. 25-71	Filed Notice of Cross Motion to Deft. Provident Loan Society. Ret. 3/30/71 together with affidavit in support.
Mar. 29-71	Filed Affidavit in opposition to Pltffs' Demand for Jury Trial.
Mar. 29-71	Filed Affidavit in opposition to motion for Jury Trial.
Apr. 8-71	Filed Notice of Motion re: Dismiss as to certain defts. Ret. 4/27/71.
Apr. 8-71	Filed Memorandum of Law of defts. Rein, and Rein, Mound & Cotton to dismiss amended complaint.
Jul 23-71	Filed Memorandum of Law for Defts. Lindsay, Leary, O'Connors and City of New
Apr. 27-71	Filed (in court Reply Affidavit in support of motion to dismiss amended c
Jul 26-71	Filed MEMORANDUM AND ORDER. The amended complaint is dismissed as to all defendants except Oswald, Jones, Doe, Roe and O'Connors. It is so ordered. Mansfield, J. (mailed notice).
Aug. 5-71	Filed ANSWER to Amended Complaint by defts. Russell Oswald, E. Jones, John Doe, and Richard Roe to complaint
Aug. 4-71	Filed deft. The Provident Loan Society, Notice of Entry
Aug. 31-71	Filed plttf's letter for enlargement of time to prepare notice of appeal.
Aug. 31-71	Filed memo-endorsed on plttf's letter filed this date: Request extension granted, appeal to be filed on or before 9-24-71. Cannella, J.
NOV 8 71	Filed Thomas Palermo's pro-se Notice of Appeal (I.F.P.) from decision of as entered on 1-15-71 & decision of Mansfield, J. as entered on 7-26-71. Notices mailed by pro-se clerk.
DEC 7 71	Filed Suppl. Affidvt of John F Walsh, Deputy Police Comm. of NY.
DEC 7 71	Filed Defts' memorandum of law.
OCT 15 70	Filed Pltffs' notice of motion for an order denying motion of Deft Provident Loan Society of NY to dismiss action & granting a continuance as to said motion such time as counsel may be assigned or found to assist plttfs.
OCT 15 70	Filed Pltffs' affidavit in answer to suppl. affidavit of John F Walsh.
DEC 8 71	Filed notice that the record on appeal has been certified and transmitted to the USCA for the 2d Circuit this 8th day of Dec 1971.

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## PROCEEDINGS

DATE	PROCEEDINGS	
Dec. 22-71	Filed MEMORANDUM AND ORDER. Despite the fact that the complaint has been dismissed as to all defts except Oswald, Jones, Doe Roe and O'Connors, and the further fact that pliffs have periodically indicated that they might be represented by retained counsel, they now, by letter dated --, 22-71 have sought to reactivate their motion for assignment of counsel. After considering all of the circumstances the motion for assignment of counsel is, in the exercise of our discretion pur. to 28 U.S.C. 1915(d) denied. So Ordered. Mansfield J. -mailed notice.	
JAN 3 72	Filed Deft John O'Connors demand for jury trial.	
JAN 3 72	Filed Deft John O'Connors ANSWER to amended complaint.	J.L.R.
Jan 18-72	Filed pliff pro-se affdvt & notice of motion to reargue motion for the assignment of counsel & forma pauperis relief	
Jan 18-72	Filed memo endorsed on motion filed this date---Pliff Palermo's motion for reargument of his application for assignment of counsel has been considered & the Court adheres to its earlier decision denying the discretionary assignment of counsel. So ordered-Mansfield, J.	
FEB 25 72	Filed endorsement annexed to Notice of appeal by pliff from order dtd 1-18-72, "To the extent that pliffs' notice of Appeal dtd 1-26-72, may be considered to be an application for permission to appeal from an interlocutory order pursuant to R. 28 U.S.C. Sec. 1292 (b), it is denied. Our earlier order denying pliffs' motion for assignment of counsel pursuant to 28 U.S.C. Sec. 1915 (d) does not involve a controlling question of law as to which there is a substantial ground for difference of opinion. It is so ordered. Mansfield J. (notice mailed by pro-se clerk)	
May 25-72	Filed pliff pro-se affdvt & notice of motion for permission to take oral depositions in forma pauperis at time & place to be designated by Court etc.	
May 25-72	Filed Memo endorsed on motion filed this date---Pliff Palermo's motion for an order permitting him to take the oral depositions of various persons is denied without prejudice to his submission of written interrogatories purs. to Rule 31-So ordered-Mansfield, J. m/n	
Dec. 8, 72	Filed Pliffs' Affdvt of Thomas Palermo on Notice of Application re Motion returnable 12/12/72, 10:00 A.M. for an order of Declaratory Judgment or Injunctive Relief.	
Mar. 15, 73	Filed MEMORANDUM (true copy) I will see that case is tried or otherwise appropriately disposed of as soon as possible considering the various priorities which I must deal with in my schedule. Griesa, J.	
Mar. 15, 73	Filed MEMORANDUM	
Feb. 19-74	Filed defts' (Oswald, et al) affdvt. & notice of motion to dismiss amended complaint- ret. 2-28-74-	
Feb. 19-74	Filed defts' (Oswald, et al) memorandum of law.	
Feb. 28-74	Filed pliffs' affdvt in opposition to defts' (Oswald, et al) motion.	
Feb. 28-74	Filed pliffs' memo of law in opposition to motion.	
Mar. 1-74	Filed defts' Oswald, Jones, Doe & Roe's reply memo of law.	
Mar. 12-74	Filed pliffs' supplemental memo of law in opposition to defts' motion to dismiss.	
May 8-74	Filed true copy of mandate from U.S.C.A. Clerk; Appeal is dismissed for lack of prosecution.	LJL
Aug. 8-74	Filed ANSWER to complt by respondents.	
Aug. 23-74	Filed pliffs request for production & inspection of documents.	
Aug. 23-74	Filed pliffs interrogs to defts (first set.)	
Oct. 11-74	Filed defts answers to pliffs interrogs.	
Oct. 16-74	Filed respondents notice to take deposition of Thomas Palermo.	
Jun. 10-75	Filed respondents memo of law in support of motion to quash petitioners discovery requests.	

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DATE	PROCEEDINGS
-12-75	Filed pliffs notice to take depositions of Rein Mound & Cotton. 3 Subpoenas issued.
-13-75	Filed pliffs affidavit in support of writ of habeas corpus. Issued writ.
-19-75	Filed pliffs memo in opposition to motion to quash subpoena duces tecum.
7-11-75	Filed Order permitting deft (O'Connor) to take deposition of pliff Thomas Palermo confined the the West St. Prison..... GRIESA, J. m/n by Pro Se Clerk
7-17-75	Filed notice of execution of writ on 7-3-75 by Marshal.
7-10-75	Filed writ of habeas corpus ad testificandum & ordered that pliff be allowed to proceed in forma pauperis re implementation of this writ.....GRIESA, J. Writ Satisfied 7-1-75.
9-9-75	Filed Memorandum-Decision #43049. In a letter of 7-17-75, the Att'y Gen's office requested a separate trial of the so-called \$1983 & habeas corpus issues; & a ruling that pliff Salzman is not a proper party pliff because he has not exhausted state remedies & has not signed the complt. For reasons indicated, both requests are denied..... GRIESA, J. m/n by Pro Se Clerk
9-17-75	Filed pliffs petition for writ of habeas corpus on behalf of pliff (Thomas Palermo). Writ issued. Ret. 9-29-75
9-19-75	Filed examination before trial of Thomas Palermo.
9-24-75	Filed Memorandum-Decision #43115. A joint motion by pliffs & defts at a pre-trial conference for an adjournment without a date for trial scheduled originally for 9-29-75, due to illness of an essential witness, was opposed by deft (O'Connor). Application for adjournment is granted & parties are to keep Court apprised of the status of witness in question so that trial can be rescheduled. In event pliffs recover judgment, traveling expenses of O'Connor, to be paid out of judgment.....GRIESA, J. n/m by Pro Se Clerk.
10-2-75	Filed defts first pre-trial memo of law.
10-3-75	Filed writ of habeas corpus ad testificandum as to Thomas Palermo, with Marshal's return of 9-30-75.
10-6-75	Filed pliffs' trial.
12-04-75	Filed State defts' reply memorandum.
01-23-76	Filed stip & order substituting Nancy Rosner, Esq. as atty. for pliff. (NO SE) Thomas Palermo in place of Harry L. Simmons. So ordered- GRIESA, J.
3-12-76	Filed Order-- that the application is granted and the trial shall commence on 04-19-76. No further applications for adjournments by any party shall be entertained by the Court. GRIESA, J. (w/n)
04-15-76	Filed Examination before trial of Thomas Palermo taken on 11-15-74
4-20-76	BEFORE GRIESA, J. JURY trial begun.
4-20-76	trial cont'd
4-21-76	trial cont'd
4-22-76	trial cont'd and concluded. Writ of habeas corpus granted. Judgment to be submitted.
05-12-76	Filed Opinion # 44000--- for the reasons stated, the parties are directed (TO NO SE) to submit an appropriate judgment and this judgment will need to dispose of all phases of the case, and that means that the lawyers will have to review all the proceedings and make sure that there is an appropriate judgment entered as to all claims of the pliffs and all of the defts including the John Doe and Richard Roe defts. so that the record is completely clear and final judgment entered. So ordered- GRIESA, J.



(PAGE # 6)

PROCEEDINGS

DATE

05-19-76

Filed Judgment--that the Amended Complaint be dismissed as to the defts. named without costs- that the Amended Complaint be dismissed on the merits and without costs as to defts. Russell Oswald, Howard Jones (sued herein as E.S. Jones) and John O'Connor, and as to unserved defts John Doe and Richard Roe, the last two named defts. being fictitious and not served with process herein, the persons intended be other Commissioners of Priso of the State of N.Y.- and that the writ of Habeas corpus is sustained, that Thomas Palermo be discharged from the custody of Roy Lombard, Supt. of Green Haven Correctional Facility and from state custody and any state parole supervision as of 4-22-76. GRISA, J. Judgment entered 5-19-76 clerk



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THOMAS PALERMO and SHELDON SALTZMAN,

Plaintiffs,

v.

RUSSELL OSWALD, M. K. JONES, and  
JOHN O'CONNOR, ET AL.,

Defendants.  
-----X

70 Civ. 3705 (T.P.G.)

OPINION

APPEARANCES:

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By: Ralph McMurry, Esq.  
Robert G. Farrel, Esq.  
Attorneys for defendants Oswald, Jones, Doe and Roe

BERNARD RICHLAND, ESQ.  
New York City Corporation Counsel  
By: William J. Walls  
Attorney for defendant O'Connor

GRIESA, J.

This action was commenced in 1970 at a time when plaintiffs Palermo and Saltzman were both New York State prisoners. They sued various defendants seeking damages and an order that they be released from prison and certain other relief.

The complaint was brought under 42 U.S.C., Sections 1983 and 1935, alleging violations of plaintiffs' constitutional rights. Basically, the allegation was that Queens County District Attorney Mackell and other officials, including members of the New York Parole Board, had participated in making an agreement in October 1969 with Palermo and Saltzman which induced these men to arrange for the return of \$4,000,000 in jewels stolen from the Provident Loan Society. The allegation in the complaint was that this agreement also induced Palermo and Saltzman to plead guilty to the Provident Loan Society robbery. The complaint alleged that various considerations were agreed to, the main ones being that Palermo and Saltzman would receive suspended sentences or discharges by the Queens County Court on the Provident Loan Society matter and that they would be paroled in August 1970 on sentences



which they had received in Richmond County on another case.

Shortly after the action was brought there were motions made to dismiss the complaint. These motions were heard by the then District Judge Mansfield who filed a decision on January 15, 1971, which is reported at 323 F. Supp. 478. Judge Mansfield stated, at page 485 of that decision:

"... it is a fundamental prerequisite of the plea negotiations that the representations made to the defendant be accurate and that promises made be kept...."

Judge Mansfield held that the complaint stated a valid claim against Parole Commissioners Oswald and Jones and other parole commissioners named as John Doe defendants, in that the complaint alleged that the parole board members had promised parole to Palermo and Saltzman on the Richmond County charge and had failed to keep that promise. Judge Mansfield refused to dismiss the complaint as to Oswald, Jones and other parole commissioners named as John Doe defendants. Judge Mansfield also denied the motion to dismiss the case

as to a New York City detective named John O'Connor, who had participated in the plea negotiations. Judge Mansfield held that there was no immunity or other legal reason for dismissal as to O'Connor.

However, the complaint was dismissed as against most of the defendants for various legal reasons. Most of Judge Mansfield's discussion in this connection is irrelevant to our present problems except that which deals with District Attorney Mackell and Chief Assistant District Attorney of Queens County Ludwig. Mackell and Ludwig were both named as defendants in the original complaint. As to these defendants Judge Mansfield stated, at page 485 of the opinion:

"The present complaint, however, is limited to a general charge that the defendants failed to fulfill the commitments made, a failure that could have occurred even though they used reasonable diligence, since the power to grant parole rested with the parole board and not with the prosecutorial defendants."

However, Judge Mansfield also stated at the same page:

"If it were alleged that these prosecutorial defendants had entered into the alleged agreement with knowledge that the agreement would in all probability not be performed, we would be inclined to uphold the complaint on the ground that no compelling justification



exists for cloaking them with immunity, since plea agreements touch at the heart of such liberties as are embodied in the presumption of innocence and the right to a jury trial, and public policy accordingly dictates that the conduct of officials entering into such agreements be measured by a high standard of honor, faithfulness and respect for constitutional rights."

Judge Mansfield gave the plaintiffs thirty days to file an amended complaint against any of the defendants dismissed from the case, and an amended complaint was filed within the thirty-day period referred to by Judge Mansfield.

There was a motion to dismiss the amended complaint in response to which Judge Mansfield filed a decision July 26, 1971. Basically, Judge Mansfield left the case in the same posture as in the first decision. The case was left standing as against defendants Oswald, Jones, O'Connor and the John Doe defendants. Although the amended complaint attempted to allege causes of action against other defendants including Mackell and Ludwig, Judge Mansfield held that the amended complaint should be dismissed as against these other defendants.



At this time Palermo and Saltzman were pro se. No final judgment was entered as to the dismissed defendants, so that presumably any right of appeal will accrue as of the time that final judgment is entered following the present proceeding.

The case was dormant for a time. Then counsel was obtained for plaintiffs. Following a decision of the United States Supreme Court in Preiser v. Rodriguez, 411 U.S. 475, decided May 7, 1973, there were certain motion proceedings in the present case. The Preiser decision held that a Section 1983 claim for injunctive relief in the form of release from prison must be treated as a habeas corpus petition with the attendant requirement of exhaustion of state remedies.

The Attorney General of New York moved in the present case to dismiss the injunction phase of the case, alleging that state remedies had not been exhausted.

It is conceded that Saltzman did not exhaust his state remedies. Also Saltzman was released on parole in July 1974. Therefore, there is no claim in the present case for any injunctive or habeas corpus relief on the part of Saltzman. The only thing to which such a request

for relief could relate would be Saltzman's present parole status, but there is no claim for habeas relief in this case with respect to Saltzman's parole status.

As to Palermo, the State eventually withdrew its defense of failure to exhaust state remedies. Indeed, the record indicated that Palermo had made a strenuous effort to use state remedies and had been met by a bewildering array of procedural difficulties. I am convinced that Palermo exhausted his state remedies and that there is jurisdiction in the present action to entertain Palermo's habeas corpus request. The State does not contend otherwise.

It was basically in this posture that the case finally came on for trial. The claims for trial were, first, the damage claims of both Palermo and Saltzman against former Parole Commissioners Oswald and Jones.

It should also be noted that although certain other parole commissioners or former parole commissioners were named as John Doe defendants in the complaint, none of them was ever served with process or brought



in as parties. Therefore, there has been no trial of any claims against any present or former parole commissioner other than Oswald and Jones. To the extent that the record needs to be cleared on this point, the action is dismissed as against all the John Doe and Richard Roe defendants, the anonymous parole commissioners.

Now, continuing with the issues for trial, there was also the damage claim against Detective O'Connor. In addition, as already noted, the habeas corpus claim of Palermo needed to be determined by the trial. It should be noted that Palermo was considered for parole in June 1975, but parole was refused. He is supposed to be considered again in January 1977. Palermo is incarcerated at the Greenhaven Correctional Facility.

In order to have a defendant subject to an appropriate court order in the event the habeas petition of Palermo were to be granted, the State consented to the joining of the Warden of Greenhaven as a party defendant.

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The trial commenced April 19, 1976. A jury was empaneled to try the damage claim. The habeas claim, of course, was for determination by the Court without the jury.

At the conclusion of all the evidence on April 21, I held that there was insufficient evidence to submit any of the damage claims, that is, the claims against Oswald, Jones and O'Connor, to the jury and I dismissed the case as against these defendants.

This leaves for determination the habeas corpus claim of Palermo. The following are my findings of fact and conclusions of law on this claim.

On February 17, 1969, Palermo and Saltzman were scheduled for trial on a robbery charge in Richmond County. They were late for the trial. During the morning when the trial was supposed to start the Jamaica branch of the Provident Loan Society was robbed of several million dollars in jewelry. Palermo and Saltzman appeared for trial in Richmond County in mid-day of February 17, 1969.

Palermo and Saltzman were found guilty on the Richmond County charge late in February, 1969.

**BEST COPY AVAILABLE**



The verdict in that case was followed by several appearances in the next weeks by Palermo and Saltzman for sentencing in Richmond County. The sentence was adjourned several times. The apparent reason for these adjournments was to give time for the authorities to discuss with Palermo and Saltzman cooperation in obtaining the return of the Provident Loan Society jewelry stolen in Jamaica on February 17th.

Palermo and Saltzman were suspected of guilt in connection with the Provident Loan Society robbery. Indeed, Saltzman now firmly admits his participation in this robbery. On the other hand, Palermo firmly denies any participation in the Provident Loan Society robbery. In any event, they were both suspects in this robbery in the spring of 1969 and they were both arrested for this robbery in May 1969. At the time of these arrests Palermo and Saltzman were being detained awaiting sentence on the Richmond County conviction. There were various negotiations before the Richmond County sentence occurred in late June 1969, but no agreement was reached with respect to the return of the Provident Loan Society jewelry or any of the relevant proceedings.

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In late June 1969 Palermo was sentenced to an indeterminate term of zero to twenty-five years in the Richmond County case and Saltzman was given an indeterminate term of zero to fifteen years in that case.

On July 6, 1969 Palermo and Saltzman were sent to Sing Sing. This was the commencement of their term of incarceration in a State prison, as distinct from a county jail or a house of detention. They had been incarcerated in the Richmond County House of Detention or jail since February 1969.

I should note here that in the discussions with Palermo and Saltzman relating to possible parole or an agreement for parole in connection with the Richmond County conviction, there were various descriptions of the time for that proposed parole. The testimony at times refers to a parole in one year. At other times the testimony refers to a parole in eighteen months. At other times the testimony refers to parole in August 1970. In the context of this case all of these different terminologies refer to the same thing.

It appears that for an indeterminate sentence, such as was given to Palermo and Saltzman, the minimum

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time which could be served in a state prison, as distinct from a house of detention or a jail, was one year. This would be one year commencing in July 1969, and apparently the parties were under the impression that this would expire in August 1970. The eighteen months refers to the eighteen months starting with the commencement of incarceration in the Richmond County House of Detention or jail, and that would also expire in about August 1970.

Getting back to the chronology, the next relevant event is that on July 17, 1969 Palermo and Saltzman were brought back from Sing Sing to the Queens House of Detention for discussions regarding the Provident Loan Society robbery and the charge against them for that robbery then pending in Queens County.

It is clear that Queens County District Attorney Mackell had an intense interest in obtaining the return of the jewels taken from the Provident. The stolen jewels amounted to several million dollars in value and had been pledged to the Provident by over 2,000 Queens residents who had borrowed money from the Provident on this jewelry. In addition, the Provident Loan Society and its insurer had a similar intense interest in having

the jewelry returned. The law firm of Rein, Mound & Cotton was retained by the Provident and its insurer. Lawyers for that firm were active and instrumental in the plea bargaining negotiations which occurred.

Shortly after Palermo and Saltzman returned to Queens County from Sing Sing they were told of an offer. This offer was conveyed to them by their attorney, Bobbick. Bobbick said that Mackell and Mackell's assistant, Ludwig, offered the following terms. Palermo and Saltzman would be re-sentenced in the Richmond County case to 7 years and 5 years respectively. However, Palermo and Saltzman would be paroled on that case in one year from the time they arrived in Sing Sing in July 1969; a reward of \$100,000 would be paid to Palermo and Saltzman for the return of the jewels; Palermo and Saltzman would plead guilty to the Queens County charge and receive suspended sentences or discharges. Palermo and Saltzman indicated to Bobbick this arrangement was acceptable.

It appears that in general Saltzman desired to have Palermo be the spokesman on behalf of the pair in



the negotiations, and indeed certain of the meetings were held by Palermo without the presence of Saltzman. However, when such meetings were held Palermo would relay the offers or the information to Saltzman.

A few days after the visit by Bobbick, which I described above, Palermo received a visit from Detective O'Connor and from an attorney named Evseroff. O'Connor was acting on occasion as a liaison between Mackell's office and Palermo and Saltzman. Evseroff had represented Palermo at one stage of the Richmond County case. It is not completely clear why Evseroff appeared at this juncture in the Queens negotiations, but he was there.

Evseroff stated that Bobbick had misrepresented the situation. Evseroff stated that there could be no re-sentencing in the Richmond County case and there could be no reward of \$100,000. But Evseroff said that there was a new offer from the Queens District Attorney's office, and he proceeded to present this offer. Evseroff stated, in O'Connor's presence, with O'Connor doing some of the talking apparently, that the present 25 and 15 year sentences imposed in Richmond County would remain,

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but that parole would occur in eighteen months from the time of the original incarceration in February 1969. The result, as I indicated earlier, would be that the parole would occur in about August of 1970. Parole supervision would be the minimum permissible terms of five years. Evseroff and O'Connor further stated that if Palermo and Saltzman pleaded guilty to the Provident Loan robbery in Queens County they would receive suspended sentences there. Certain other elements were discussed which are not necessary to be described here.

Palermo asked how they could be assured regarding the parole. At this point O'Connor and Evseroff went to see Ludwig in the District Attorney's office. They presented the problem, at which time Ludwig retired into another room. Shortly thereafter he came back and reported to O'Connor and Evseroff that he, Ludwig, had spoken to the parole board and one or more representatives of the parole board had indicated that upon the District Attorney's recommendation the board would grant early parole to Palermo and Saltzman. This meant to Evseroff one year from July, 1969, the minimum prison time which could be served.

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O'Connor and Evseroff reported this conversation to Palermo, stating that Ludwig had spoken to a parole commissioner and that Ludwig said that the parole commissioner thought that the parole board would accept the recommendation of the Queens County District Attorney. Palermo's testimony indicates that the parole commissioner referred to in the conversation as reported to him was Commissioner Jones.

Following this meeting Bobbick re-entered the picture. Bobbick and Norman Rein of the firm of Rein, Mount & Cotton, visited Palermo two or three times. After some initial confusion in these discussions, Bobbick and Rein stated there could be no change in the 25 and 15 year Richmond County sentences, but conveyed the offer for parole on those sentences of one year from July 1969, and suspended sentences on the Queens County robbery charge. Apparently Bobbick and Rein were also indicating that a reward of \$100,000 might be paid. The testimony does not explicitly indicate that there was a discussion of the five year term on the term of parole supervision. However, it was either implicit or explicit that this was part of the offer. Again, there were certain other considerations discussed which do not need to be described here.

About October 10, 1969, two members of the Rein firm, namely Arthur Brook and Eugene Leiman, met with parole board Commissioner Jones. Also present was Detective Caparell representing the Queens District Attorney's office in that discussion. Leiman and Brook indicated that they sought assurances from Jones that Palermo and Saltzman would be paroled in eighteen months, namely, in August 1970. Exactly what Jones said is somewhat in doubt. However, the gist of the testimony is that Jones indicated that the parole commissioners would consider the request made for the parole in August 1970, but also indicated that no commitment whatever would be made by the parole board to any specific parole.

I should note that at some point before the October 10, 1969 meeting with Commissioner Jones, there was a private conversation between O'Connor and Saltzman. This occurred in the Queens House of Detention. At this time O'Connor said that Palermo and Saltzman would never get a better deal than the promised eighteen months in jail, so that they would be home by next August. O'Connor urged Saltzman to accept this deal.

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Returning to the time of the meeting with Commissioner Jones, I find that Palermo and Saltzman were never cautioned in any way regarding the absence of a commitment from the parole board. Indeed, Palermo and Saltzman were led to believe that there was a firm understanding that they would be paroled at the August 1970 time, after the year or the eighteen months, however one calculates it. Indeed, Bobbick advised Palermo after the meeting with Commissioner Jones that the meeting had been successful and that there was a deal for parole at the requested time.

The final agreement was reached on October 24, 1969. The first meeting that day occurred between Palermo and O'Connor, Rein and Bobbick. The same offer as made before was reiterated, namely, the one year parole on the Richmond County case, the suspended sentences or discharges on the Queens County robbery case and other considerations, including apparently, the \$100,000 reward. Again I find that plaintiffs were led to believe, either implicitly or explicitly, that they would receive the minimum parole supervision of five years following their release on parole.

Palermo stated that the deal was acceptable. However, later in the day O'Connor, Bobbick, and Rein returned to see Palermo and stated that District Attorney Mackell would not consent to the \$100,000 reward.

Palermo stated that the deal was satisfactory without the \$100,000 reward. At this point Palermo was taken to the office of Ludwig. Palermo asked to have Ludwig personally confirm the agreement. Ludwig stated that it was agreed that Palermo and Saltzman would be released on parole on the Richmond County charge in the year time requested, and the Queens County robbery charge would be dealt with by either discharges or suspended sentences. Again I find that in addition plaintiffs were led to believe, either expressly or implicitly, that they would also have the benefit of the minimum five-year time for parole supervision after release on parole. The details of the October 24th negotiations were relayed to Saltzman and approved by him. Of course, the consideration due from Palermo and Saltzman in connection with the agreement and the offers was to return the jewelry and to plead guilty to the Queens County robbery.

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Following the conference with Ludwig at which the agreement was confirmed, Palermo made certain telephone calls upon the instruction of Saltzman. Palermo then took the authorities to 40th Street in Manhattan by the East River. At that point \$4,000,000 worth of the jewelry from the Provident Loan Society robbery was recovered in a car at that location.

During the discussions leading to the October 24th agreement District Attorney Mackell had various meetings with Bobbick and also with Rein and Rein's partner Arthur Brook. Mackell stated that he would "make it a career" to see that Palermo and Saltzman would serve the minimum prison sentence, which would mean the one-year period, and that Mackell would "break his back" to this end.

Following the return of the jewelry Mackell issued a press release announcing the return of the jewelry. The release stated twice that this was the largest recovery of stolen property in the history of law enforcement.

It appears that the \$4,000,000 in jewelry was not all of the jewels stolen from the Provident Loan Society. An estimate has been made that approximately \$1,000,000 worth of jewelry was not returned. However, at no time did District Attorney Mackell or anyone from his office register any complaint to Palermo and Saltzman to the effect that they had in any way breached the agreement or failed to carry out their part of the agreement.

The evidence in this case has explored in some detail numerous events occurring following October 24, 1969. Only a few of them need to be mentioned here. One salient event occurred about December 15, 1969. At that time it appears that an employee of the parole board by the name of McCarthy telephoned Assistant District Attorney Ludwig and discussed with him the attempt to have some arrangement made for early parole of Palermo and Saltzman. McCarthy took a very jaundiced view of any lenient treatment of Palermo and Saltzman. McCarthy stated that Palermo and Saltzman were not entitled to any consideration of any type whatsoever by any agency.

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Contrary to the express agreement made by Ludwig and his superior, Mackell, that they would bend every conceivable effort to carry out the agreement and to obtain the minimum prison time and early parole for Palermo and Saltzman, Ludwig replied to McCarthy as follows. Ludwig expressed his agreement with the attitude of McCarthy and added that the case reminded him of Murf the Surf, involved in the robbery of the American Museum of Natural History where leniency was granted after some restitution of the stolen property and this was followed by a violent crime by the person who had been treated leniently. This volunteered opinion of Ludwig, as I say, clearly violated the letter and spirit of the agreement made by Ludwig and Mackell.

The comment of Ludwig was important enough to record in a lengthy memo prepared by McCarthy which was circulated to various parole board officials and placed in numerous files.

On April 16, 1970 Palermo and Saltzman entered guilty pleas to the robbery charge in Queens County. The parole hearings for Palermo and Saltzman were scheduled for the end of April. The purpose of these hearings was



to set the minimum sentence to be served under the indeterminate 25 and 15 year sentences imposed in Richmond County. The lowest minimum sentences which the parole board could set were the one year terms from July 1969 which had been the subject of the many discussions and had been purportedly agreed upon by Mackell and Ludwig.

In preparation for the April hearings, Mackell wrote a letter to Russell Oswald, Chairman of the Board of Parole, which did indeed recite the cooperation of Palermo and Saltzman in obtaining the return of the property, the stolen jewelry. The letter enclosed the press release which had been issued by Mackell at the time of the return of the jewelry. However, Mackell's letter made no reference to the commitment by his office to the one-year term. Although the letter stated that lenient treatment was requested, the letter must be viewed as somewhat ambiguous and less than <sup>the</sup> vigorous action which had been promised.

In light of Ludwig's private statement to the parole board through McCarthy, the letter is less than an effective representation of the interests of Palermo



and Saltzman in carrying out the agreement which Mackell and Ludwig had entered into.

At the same time Norman Rein of the firm of Rein, Mound & Cotton wrote a vigorous letter to the parole board recommending "extreme leniency" in the treatment of Palermo and Saltzman.

For various reasons no hearing was held in April. However, parole hearings were held for both Palermo and Saltzman in June, 1970. The transcripts of these hearings are in evidence. Both Palermo and Saltzman made fervent pleas with respect to what they believed to have been agreed, namely, that they would be paroled in the one year time.

The hearings were dealt with by a panel of three parole commissioners, namely, Regan, Lewis and Gross. The commissioners advised Palermo and Saltzman that no commitment whatever had been made by the parole board and that they would treat the case entirely without respect for any such commitment.

In the case of Palermo, the panel fixed the minimum term of imprisonment as six years. In the case of Saltzman, the minimum period of imprisonment was fixed at five years. The decisions of the panel are not reviewable and were not reviewed by other parole

commissioners of the full parole board of twelve persons.

It appears that some representative of the Queens District Attorney's office requested to attend the parole hearings at the prison. Who that was is not shown by the record. The testimony about that is vague in the extreme.

However, it is perfectly clear, and the record so demonstrates, that steps were open to District Attorney Mackell's office to take far more vigorous action to carry out the agreement with Palermo and Saltzman than was taken. Apparently the policy of the parole board is that outsiders, such as representatives of a district attorney's office, are not permitted to actually appear at the parole hearings held in the prison. However, it is perfectly permissible to have persons such as representatives of a district attorney's office meet with the panel of the parole commissioners outside of the prison and present any views which should be presented. No attempt at such a meeting was made.

August 1970 passed and neither Palermo nor Saltzman was released on parole.



In the late fall of 1970 Palermo moved to withdraw his guilty plea on the Queens County robbery charge. This motion was denied. However, the Queens County sentencing judge discharged both defendants at the time of the sentence, which occurred January 11, 1971.

Now, let me summarize my conclusions.

I find that Palermo and Saltzman were induced to plead guilty to the Queens County robbery charge in connection with the Provident Loan Society robbery and were induced to return \$4,000,000 in jewels, and that the inducements consisted of promises and representations made to them and to their attorneys by Ludwig and O'Connor that Palermo and Saltzman would be paroled in the one year period, namely in August 1970, in the Richmond County case, and that the period of time to be served on parole supervision after such release would be five years.

As to District Attorney Mackell, I find that the preponderance of the evidence demonstrates that Mackell knew of the representations of Ludwig, that is, the flat commitments that parole on the Richmond County charge would be in the one year time and that the period



of supervision after such release would be five years. I cannot believe that Mackell was oblivious to the fact that Palermo and Saltzman were requiring some very specific commitments in return for their assistance with respect to the \$4,000,000 in jewels and their guilty pleas.

I further find that Ludwig and Mackell knew that the commitments and representations made to Palermo and Saltzman about the August 1970 parole were false and knew that they had no commitment or assurance from the parole board regarding any parole time.

As to O'Connor, I find that there is no evidence that he was more than a messenger and there is no evidence that he knew of the falsity of the representations or commitments he was conveying.

I further find that Mackell clearly violated his agreement to take all possible steps to have Palermo and Saltzman paroled in August 1970.

Consequently, we have a situation where a plea bargain was made, was made in bad faith on the part of the prosecuting authorities, and it was not carried out.

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The question arises as to what relief should be granted. See Santobello v. New York, 404 U.S. 257, 263 (1971). It is clear to me that one possible alternative discussed in the cases would be completely meaningless here, and that alternative is the opportunity to withdraw a guilty plea. See United States ex rel. Selikoff v. Commissioner of Correction of State of New York, 524 F.2d 650 (2d Cir. 1975). Obviously, it would mean nothing whatever to permit a withdrawal of the guilty pleas in Queens County.

With respect to the causes of action for damages, I have already noted the fact that the causes of action against Mackell and Ludwig were dismissed on the pleadings by Judge Mansfield. The defendants which Judge Mansfield allowed to remain in the case subject to damage claims have been dismissed by me because the evidence did not substantiate such claims. Whether or not there would be valid damage claims against Mackell and Ludwig, is a matter which I cannot decide at the present juncture. Whether Judge Mansfield's dismissal of the claims against Mackell and Ludwig will be overturned on appeal and whether the claims against them will be reinstated is something that is a matter for the appellate process.



In the present circumstance the only meaningful and reasonable way to grant relief is to order the release of Palermo and grant the writ of habeas corpus.

For the reasons stated above I am directing that Palermo be immediately released from incarceration and that he be released unconditionally, not subject to parole. If the plea bargaining agreement had been carried out, he would have been released in August 1970 and the five year parole supervision time would have expired in 1975. All of these time periods have expired.

The parties are directed to submit an appropriate judgment and this judgment will need to dispose of all phases of the case, and that means that the lawyers will have to review all the proceedings and make sure that there is an appropriate judgment entered as to all claims of the plaintiffs and all of the defendants including the John Doe and Richard Roe defendants so that the record is completely clear and final judgment entered.

So ordered.

Dated: New York, New York  
April 22, 1976

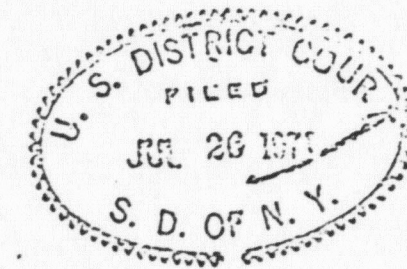
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THOMAS P. GRIESA  
U.S.D.J.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



-----x  
THOMAS PALERMO and SHELDON  
SALTZMAN,

Plaintiffs,

-against-

NELSON A. ROCHFELDER; TOSWELL  
OSWALD; E.K. JONES; JOHN DOE;  
RICHARD DOE (Payole Board Com-  
missioners); THOMAS MCKELL; FRED  
LUDWIG; THOMAS BENESKOS; ARTHUR A.  
DARRICRAND; JOHN A. BRAISTEAD;  
MR. RALPH DIACRIO; PETER T.  
FARRELL; MICHAEL KERN; JOHN V.  
LINDSAY; HOWARD LEARY; JOHN  
O'CONNORS; NORMAN KERN, ESQ.;  
JACOB ESVERONT, ESQ.; THE PRO-  
VIDENT LOAN SOCIETY; THE STATE  
OF NEW YORK; THE CITY OF NEW  
YORK,

Pro Se 70 Civ. 3705

Defendants.  
-----x

MANFIELD, Circuit Judge:

For the reasons set forth in detail in our decision dated January 15, 1971, dismissing plaintiffs' original complaint as to all defendants except Oswald, Jones, Doe, Roe and O'Connors, defendants' motion to dismiss the amended complaint filed

\* Heard the case as a District Judge and after appointment to the Circuit Court of Appeals was designated to sit on the District Court for the purpose of completing this phase of the case.



February 18, 1971, is granted except as to those named defendants.

Although the amended complaint adds some characterizations with respect to the prosecutorial defendants (Mackell, Ludwig, DiIorio, Demaskos, Darrigrand and Braistead), the essence of the claim against them remains that they failed to carry out the alleged agreement rather than that they acted in bad faith, misrepresented facts, or engaged in other misconduct.

The allegations in Palermo's complaint concerning possibly unauthorized or unlawful actions by parole officials strike us as sufficiently precise and detailed to withstand dismissal. Cf. Simmons v. Maslinsky, 45 F.R.D. 127 (E.D. Pa. 1968). The state argues that members of the Parole Board are immune from suit, citing *inter alia*, Silver v. Dickson, 403 F.2d 642 (9th Cir. 1968), *cert. denied*, 394 U.S. 990, which has been followed in a series of cases in the 9th Circuit, Bennett v. People of the State of California, 406 F.2d 36, 39 (9th Cir. 1969); Villalobos v. Dickson, 406 F.2d 835 (9th Cir. 1969); Allison v. California Adult Authority, 419 F.2d 822, 823 (9th Cir. 1969); Gilmore v. Gordon, 422 F.2d 860 (9th Cir. 1970); Worley v. California Dept. of Corrections, 432 F.2d 769, 770 n.4 (9th Cir. 1970), and elsewhere, Robinson v. Largent, 311 F. Supp. 1032 (E.D. Pa. 1970); Paige v. Pennsylvania Board of Parole, 311 F. Supp. 940 (E.D. Pa. 1970). A reading of Silver reveals, however, that



"beat, kicked, knocked, stomped, thrashed, tear-gassed and cursed" the plaintiffs, and remanded for further proceedings in the district court. See also Richardson v. Rivera, 335 F.2d 996 (D.C. Cir. 1964) (claim of racial discrimination on the part of parole officials not barred by immunity defense), and Belveal v. Bray, 253 F. Supp. 605, 609 (D. Colo. 1966) ("Officials who act without the scope of their delegated authority must, at the least, proceed at their own risk"). The situation would appear analogous to that in Spices v. Bottard, 317 F.2d 273 (7th Cir. 1963), explained in Brown v. Dunn, 409 F.2d 341, 343 (7th Cir. 1969), as follows:

"The defendant judge there, who had disqualified himself in a coram nobis proceeding, was charged with subsequently obtruding himself into the proceeding, interfering with the hearing proper, knowingly making a false affidavit and intimidating the public defender.... The ground [for decision] was that the defendant judge was not, under the allegations, performing judicial function so as to be immune."

Accordingly, the amended complaint is dismissed as to all defendants except Oswald, Jones, Doe, Roe and O'Connors. This disposition, being based solely upon the allegations of the complaint, which must as a matter of law be construed most favorably to plaintiffs upon a motion to dismiss, does not imply any views as to the merits of the claim against the



latter defendants.

It is so ordered.

Wm. F. Miller  
U.S.C.J.

Dated: July 26, 1971.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

THOMAS PALERMO and SHELDON SALZMAN,

Plaintiffs,

v.

RUSSELL OSWALD, E. K. JONES,  
JOHN DOE, RICHARD DOE (Parole  
Board Commission), JOHN O'CONNOR,  
et al.,

Defendants.

70 Civ. 3705

MEMORANDUM

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GRIESA, J.

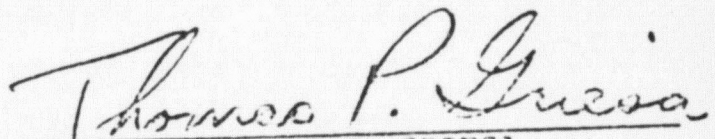
In a letter of July 17, 1975 the Attorney General's office requested (1) a separate trial of the so-called § 1983 and habeas corpus issues; and (2) a ruling that Salzman is not a proper party plaintiff because he has not exhausted state remedies and has not signed the complaint.

Both requests are denied. The same basic issues underlie both the § 1983 and habeas corpus claims. The evidence should be presented once, and

on the basis of that evidence the jury will render its verdict on the § 1983 claims of both plaintiffs, and the court will render its decision on the habeas corpus claim of Salzman.

There is no merit to the claim that Salzman is not a proper party plaintiff. Since Salzman has been released on parole, his sole remaining claim in this action is the § 1983 cause of action for damages. With regard to any failure to sign the complaint, the circumstances clearly do not warrant dismissal of his case on that ground.

Dated: New York, New York  
September 9, 1975

  
THOMAS P. GRIESA  
U.S.D.J.



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Form 100-A

STATE OF NEW YORK — EXECUTIVE DEPARTMENT — DIVISION OF PAROLE

# MEMORANDUM

December 18, 1969

FOR BSS ONLY

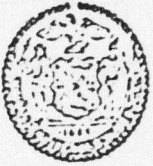
At this time, 1:30 p.m., 12/18/69, Commissioner Oswald was advised of the total situation (of which he had some prior knowledge). He was alerted as to the possibility of approaches on behalf of Palermo and Saltzman by Queens County D.A. Office and by Attorneys Bobbick, Brook and Leiman.

The writer further declared that this agency has no obligation whatsoever to show any leniency or give any consideration to Palermo and Saltzman.

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THOMAS J. MACKELL  
DISTRICT ATTORNEY

Office of the  
District Attorney  
of Queens County

QUEENS CRIMINAL COURTS BUILDING  
125-01 QUEENS BOULEVARD  
KEW GARDENS, JAMAICA, N. Y. 11418  
TELEPHONE: 261-6200

April 24, 1970

People of the State of New York

- against -

THOMAS PALERMO & ano.

Russell G. Oswald, Chairman  
Division of Parole - Board of Parole  
2 University Place  
Albany, New York 12203

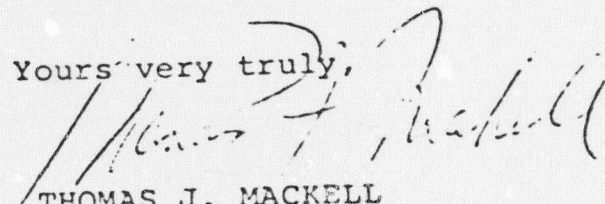
Dear Mr. Chairman:

The above named prisoner is appearing before the Board of Parole on April 28, 1970 at Sing Sing Prison in connection with a conviction for robbery in the County of Richmond. On April 16, 1970, the same prisoner entered a plea of guilty to Robbery in the Third Degree [Penal Law § 160.05] in connection with a hold-up of the Provident Loan Society in Jamaica, Queens on February 17, 1969.

Solely because of the cooperation of the above-named defendant, practically all of the property taken in that robbery was recovered. In negotiating the return of this property, my office firmly committed itself to use all means-lawfully possible to assure lenient treatment to the offender. The prisoner is scheduled to be returned to the Supreme Court, County of Queens, before Justice Peter Farrell for sentencing on July 7, 1970.

I am enclosing material describing the value to the community of the recovery of the property stolen. I urge that you take no action that would prejudice the prisoner in availing himself of the commitment made by my office when sentence is imposed for that robbery.

Yours very truly,

  
THOMAS J. MACKELL  
District Attorney  
County of Queens

cc. Snr Par.Off. Fred Caputo  
Sing Sing Prison  
Ossining, New York

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REIN, MOUND & COTTON

COUNSELLORS AT LAW

56 PINE STREET

NEW YORK 10005

NORMAN S. REIN  
MAURICE MOUND  
BERNARD COTTON  
EUGENE A. LEIMAN  
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ERNEST E. ROSENBERG  
EUGENE WOLLAN  
LEONARD S. DOME  
ARTHUR N. BROOK  
ALAN JOHN REIN

HA 5-9200  
CABLE ADDRESS "REIN, L.A."

COUNSEL  
SAMUEL A. BERGER

April 3, 1970

PERSONAL AND CONFIDENTIAL

Honorable Thomas J. Mackell  
District Attorney Queens County  
125-05 Hoover Avenue  
Kew Gardens, New York

Re: Provident Loan Society  
(Thomas Palermo)

Dear Mr. District Attorney:

Because of the sensitive nature of the contents of this letter, I am - perhaps out of excessive caution - having it delivered "for your eyes only."

You will, I am sure, recall that this office, as counsel to The Provident Loan Society, worked closely with your office and the Police Department in effecting recovery of a substantial portion of the property stolen from the Society's Jamaica Branch in the course of a robbery on February 17, 1969 and that there never would have been a recovery without the active assistance of Thomas Palermo, one of the accused robbers.

You will also remember that, in return, Palermo was assured of and promised certain specific assistance and consideration in connection with particular criminal charges.

The first of these concerns Palermo's conviction and sentence for robbery in Richmond County, as a result of which he was sentenced to an indeterminate term in State Prison not to exceed 25 years. With respect to this,



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April 3, 1970

you forthrightly stated several times, to me, to my partner, Arthur N. Brook, and to Palermo's attorney, Edward Bobick, that you would "make it a career" to see that Palermo would serve the minimum possible sentence and that, to that end, you would appear before the State Parole Board when Palermo first "met" the Board, and make a strong recommendation to that effect in his favor. I restated this to Palermo, the last time on the very day when the recovery was effected. We understand that Palermo is scheduled to appear before the Parole Board when it meets in Sing Sing Prison on April 28-30, 1970, and I therefore assume I can rest easy that this commitment will be fulfilled to the letter.

The second area of concern is the disposition of the still open indictment pending in Queens County against Palermo as a result of the Provident Loan Jamaica Branch robbery. As you know, Palermo was given assurance by your good office that this charge would be "taken care of" if the property in question were returned. Just how this indictment would be "taken care of" was the subject of many conversations between your Chief Assistant, Mr. Frederick J. Ludwig, and my partner, Eugene A. Leiman, an old colleague of Mr. Ludwig in District Attorney Frank Hogan's office. It was our understanding that Palermo's case was before Judge Farrell, that Judge Farrell had advised Mr. Ludwig that, if the District Attorney would so recommend, he would impose a sentence, upon Palermo's plea of guilty, that was either suspended or would be "time served" so that, in no event, would Palermo have to serve any more time than that fixed by the Parole Board. Mr. Ludwig advised Mr. Leiman that he had made such a recommendation to Judge Farrell, in an informal "off the record" discussion of the matter with the Judge and that, therefore, were Palermo to plead guilty, he would have "nothing to worry about".

Recently, however, your Mr. Thomas Demakos who, strictly speaking, has jurisdiction over Palermo's case, has advised us that, so far as he knows, Judge Farrell has



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April 3, 1970

indicated no more than that any sentence he may impose on Palermo would run "concurrent" with the Richmond County sentence - which is, of course, a far cry from what we were led to believe would actually happen.

Without being in the slightest sense critical of either Mr. Ludwig or Mr. Demakos - both of whom we hold in the highest esteem - it would seem that there is somewhat of a dichotomy in the matter between them.

You alone can resolve that apparent conflict in your staff and, in line with your previously expressed attitude, can resolve it in favor of urging extreme consideration for Palermo. Palermo's case in your County has been adjourned to April 8, when he will again appear before Judge Farrell. We understand that if the type of sentence that Mr. Ludwig previously recommended is then available, Palermo will make a disposition of his indictment.

I realize that you have many perhaps more important matters that make current demands on your time and attention. Yet, in the circumstances, I sincerely believe that this matter, which involves no more than honoring a commitment to a convicted robber for helping your office recover stolen property belonging to over 2,000 residents of your County is, consonant with the way you have enhanced the dignity and prestige of your office, still worthy of your personal attention and consideration.

I shall be most obliged if you will give me your assurance that this troublesome matter can now be happily resolved for all concerned.

Sincerely yours,

*M. M. Rein*

NSR:mcn



*File*  
January 7, 1970

MEMO TO : FILE  
COPY TO : NSR & ANB  
FROM : EAL

Re: Provident Loan

This is a memorandum of my telephone conversation with Jim Caporell on January 5, 1970.

He said that DA Mackell had spoken with Parole Board member John Quinn and had confirmed that Palermo cannot go before the Parole Board before May 1970 at the earliest, since that would be 9 months after he began his State Prison sentence in Sing Sing which was in July 1969.

The Queens DA's office has just completed a call to Utica and spoke to the Chief Assistant DA or the DA up there about Palermo's case. They now have a commitment from Utica that Palermo will be permitted to plead to a misdemeanor and will receive a suspended sentence. Still up in the air is whether his plea will also "take care of" the other two defendants. The Queens DA's office has agreed to accept the expense of sending two of their detectives with Palermo to Utica for the purpose of transporting him there and back for the plea and sentence. They are awaiting the receipt of a formal order from the court in Utica (in the nature of a writ) which will empower the New York City authorities to release Palermo to Utica and for return. Caporell says that he expects that all of this will be accomplished within a week or 10 days.



MINIMUM PERIOD OF IMPRISONMENT HEARING

COTM CROSS:

Q. Thomas Palermo?

A. Yes sir.

Q. Have a seat, Thomas. You know the reason for your appearance here this morning?

A. Yes.

Q. This isn't your parole hearing. This is the time we set your minimum term of imprisonment.

A. Yes.

Q. At a future date you will be coming in discussing parole. Are you aware of that?

A. No, I wasn't aware of that.

Q. That's the way it is. You were given a maximum sentence not a minimum.

COTM REGAN:

Q. What was your understanding?

A. I was told that when I came up here because of the cooperation that myself and my codefendant--had returned approximately \$4,000,000 in diamonds that we would see a Board at the minimum date and that we would be given a year sentence to do in prison which would include another two months and that--

COTM LEWIS

Q. Who told you that?

A. The District Attorney, my lawyer, the lawyer for the Corporation who handled the jewelry, Mr. Ryan.

Q. You have it in writing?

A. I have it by my attorney in an affidavit.

Q. Well, the District Attorney or the Judge can't commit this Board.

A. I understand that, sir.

Q. This is a function the Board has to exercise, and we will exercise.

A. I was told that, but I was told the Parole Board had been spoken to, I don't know if it was true, this was told to me by Mr. Mackel and the assistant, Mr. Ludwig. As I had experience with this Board before, you have the record?

COTM REGAN:

Q. Yes.

A. and I was, I told them the same thing, how can you make a guarantee for somebody. They said well we spoke with the Commissioners and they said they would as long as you have us under supervision for the term that they can decide and they can put us on the street. I said yes and they said if you return the stuff that they would be willing, you know, that although you couldn't legally be considered at this time, I understand there were several meetings taken place in the city with the District Attorney, my lawyer, and some members of the Parole Board. I don't know how true it was, I wasn't there. This is only what I was told, and I was also told that being they have the jurisdiction to take you off the street even without a crime.

Q. There is nothing in our record that indicates any member of the Parole Board conversed with you, your lawyer, or the District Attorney?

A. I don't know, as I said, sir, I wasn't there. This is only what I was told, you know, and this was the reason why I and my codefendant returned the stuff, this is what we were told.

COTM CROSS:

Q. Okay.

Q. How are you getting along in here, Tommy?

A. Good, no trouble.

Q. You got a clean sheet here.

COTM CROSS: Do you have anything you like to ask, Mr. Lewis?

COTM LEWIS: Yes.

COTM LEWIS:

Q. Well, I want Palermo to be abundantly clear that the Board of Parole handles every case as an individual case, and takes into consideration whatever cooperation you did offer law enforcement people in the solution of what was obviously a serious crime. However, while these may be viewed as mitigating circumstances they don't mitigate the fact that a serious crime did occur which you perpetrated and for which the Court sentenced you to a maximum term.

A. Yes, I understand that.

CONTINUED.



COT: LEIS:

- Q. of rather long duration.  
A. I understand.

Q. The Board will have the responsibility of setting the date as a result of this hearing, the minimum period of imprisonment at which time we will talk to you about parole. Generally, and in any case that is transacted under that heading of minimum period of imprisonment hearing, a release doesn't eventuate. We will set a minimum period at which time you come back before the Board to talk about parole, and that doesn't mean that necessarily that you go out then, and this is the process.

A. Right.

Q. Anything you want to ask about that?

A. No, sir. I understand, it's just like I said it was an agreement into which I was led to believe, I thought this would be the understanding prior to getting here. As I said I had experience with the Board before and I expressed this and all along the line I was assured that they had said I would only do the mandatory time as required by law, behind the State prison law, and that I would have to do the year and that's what I will do, and at that time that's what they said. I can't help it, I was led to believe this. You know naturally I am sorry if it was a misunderstanding because I am the one who is suffering for it, you know.

Q. Right.

A. You know, I don't know what else to say. I did return like I say \$4,000,000 in diamonds that never would have been returned without the confession of myself and my codefendant and as far as the crime in Staten Island, I don't know if it was recorded here, but the District Attorney, although my attitude was bad about that crime, it was bad for very good reason. I didn't do that particular crime. I am not saying that I haven't stolen prior to this or after this, but that particular crime I didn't do. I was offered a plea, I didn't accept it. I am led to believe that the D. A. is aware, or at least the Captain of Detectives came in and stated they were aware of negotiations of returning the stuff, they required my cooperation and I didn't do this crime, and it could be that I got convicted of that particular crime for the reason that while we were going to trial at the time this crime and a lot of law enforcement heat on the D.A.'s office, a lot of heat and pressure on, there was a lot of influence and the judge in that particular county had a grudge against me, had been my attorney on one other occasion and made a motion to disqualify himself, I don't know if the record indicates all these things is part of the reason why I got 25 years. Had the case been otherwise I was looking not to have 25 years parole to be honest with you even if the agreement was kept. I felt 23 and a half years on parole under supervision is a long time.

Q. Theoretical amount that is by law, but any person no matter what maximum sentence including Life once paroled and after completion of five satisfactory years of supervision may be completely discharged from his sentence.

A. Yes, sir, that I was told also.

Q. It's accademic unless you got 25 years or Life and you wouldn't do that much parole unless you were going to be violated in questionable activities.

A. Violated, right. At the time I didn't know until they explained the same thing. They said five and a half years because I was looking for a sentence that if I had returned the stuff. They were talking in terms of five years for me and my codefendant, you know five for me and three or less for my codefendant. He wasn't never in any trouble and they felt I was undue influence on him which I was. Like I said to you they even tried to get Judge Kern of Staten Island to go along with it. Staten Island is an independent county, they ain't going to cooperate so the next best thing they seen we wanted to cooperate in returning the stuff, the next best thing they thought at us was parole. They said they spoke to certain Commissioners. I wasn't there I don't know and they said it was explained, the situation, and that I was supposed, he said, they about—they were told by you people.

CONTINUED



COUNCIL IS:

- Q. Let me interrupt you. Any discussions that may have been held would have only been held are what are the legal possibilities, not what will be done in the case of Palermo or Saltman or any other person because no one will, can, or may commit this Board of Parole.
- A. Yes, that I realize.
- Q. What was being discussed were the legal possibilities, not what the Board would do.
- A. You see they didn't explain it to me in that manner. They explained it in an adverse manner and I hesitate to say because I realize the scope of what it is, what the repercussions could be. However, I am in a position where I don't know until it was explained, what I was told.
- Q. Right.
- A. They told me these things and they told me that they couldn't reduce my sentence because Judge Kern wouldn't be moved, is 68 years old, he has a position for life, and in Queens County they would give you these three years, I would have had two, I would have owed nothing. Now it came to a case where I am not going to do one or two or that, if I did one and a half that it would be like a thing of discussion, at least like we see no reason the Parole Board wouldn't go along and we discussed it with them. Like I said, this is what they told me and that they felt and we felt if you would cooperate and return this amount of merchandise, it's quite a bit, lots of people been hurt, that won't be hurt, they would be willing to parole you for the simple reason they would have you under jurisdiction for five years at which time they would consider dropping it and probably would. You do a total of six and a half years between the year and a half and the five under supervision and which isn't bad. Of course, no body is going to give you a license to continue doing wrong, this would be like your chance to go straight. If you done that, the next time, if you violated the Parole Board would say forget that you didn't get a new charge, you owed 23 and a half years, they would have considered you got your credit, you understand this, we can't help you any further than to make these recommendations and you know and as I said I was told that although I don't know how to say legally couldn't review my case. It was conversation made as to the facts. Well, when the men are eligible yes we will consider these things and I was also told that and I don't know if it's down there that part to pressure to tell but they said to me if you don't return the merchandise even though at this time I wasn't, I hadn't plead guilty to it and I hadn't got to trial, the Parole Board you know is aware of the discussions, you have to return the stuff and they are going to ask you that and we can assure you you will not be paroled under no circumstances if the merchandise is not returned.
- Q. Well, we the Board of Parole could not assume responsibility for what you might have been told. I am not saying that anyone mis represented in that sense, perhaps communications, and lack of may have been rather, but I am saying that the decision is to be made in your case as to your minimum period of imprisonment.
- A. Yes.
- Q. Still remains to be made and will result subsequent to this appearance today.
- A. Right.
- Q. We recognize what you have said, your explanation of what was said to you, your understanding of what was said to you.
- A. Right.
- Q. We have rather detailed records and we will take all into consideration, but we will still act in accordance with what we feel the merits of the case are and what the circumstances are, what your responsibilities are, and what our appraisal and estimate of you may be as to culpability in the past, involvements in the past, and our assessment of your ability in the future to go out of here on parole. We don't sit in judgment on a man, we don't condemn a man, but we must make a judgment when he can go out of here and avoid further involvement, and we will set a date when we will talk with you. Anything else you want to say?
- A. No.

CONTINUED

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CJTM LEWIS:

Q. That's all.

CJTM REGAN:

Q. Wait a minute. What's your attorney's name?  
A. Edward Bobick.

Q. As far as our records are concerned there is nothing to indicate the Commissioner talk-d with your attorney, he did talk relative to your case, but not with your attorney.

A. I see. I was only told. I hope you don't think I am lying or--

CJTM GROSS:

Q. No, no.

Q. No, no. Not at all.

A. I know you people know I didn't return like I know this amount of material even though it may be in my--whoever possession or how I came into it anticipating I was going to do a 25-year sentence or the six, eight, which I had anticipated I was going to do if I hadn't returned the stuff and it wasn't my understanding that the judgment would be the same, you know.

CJTM REGAN:

Q. Anything further?

A. No.

Q. All right.

DECISION: Minimum Period of Imprisonment is established as six years.

SING SING PRISON - JUNE 1970 BOARD - REGAN, LEWIS & GROSS / pjs  
(Held June 3, 1970) RIVERA



MINIMUM PERIOD OF IMPRISONMENT HEARING

COUNCIL LEWIS:

Q. You are Sheldon Saltzman?

A. Yes, sir.

Q. You had a little wait getting in here.

A. Yes, sir.

Q. You may have a little wait getting out of here, too.

A. Yes.

Q. Saltzman, do you understand the purpose of this appearance here today?

A. Initial appearance.

Q. What's that?

A. Initial appearance.

Q. No, it's not an initial appearance.

A. I don't know.

Q. This is a minimum period of imprisonment determination. Do you understand the difference between an initial appearance and a minimum period of imprisonment determination?

A. Not really.

Q. Let me explain it to you. You have a maximum sentence—two sentences—but we will talk about the 15-year maximum, which is the controlling sentence. You have no minimum. The Board of Parole sets the minimum when a judge doesn't set the minimum. A person so committed after ten months in the institution he is before this board to have his minimum period set. Initial appearance before a Board usually implies that you are being considered for parole. You are not being considered for parole today.

A. Well, I was promised, understand a deal. ✓

Q. There are no deals with the Board of Parole, and there are no promises with the Board of Parole.

A. Well, it wasn't promised before the Board of Parole. I understand they would take into consideration a letter or recommendation from District Attorney Mackel which I understand he sent up. I was very instrumental in returning \$4,000,000 worth of jewelry.

Q. Did you commit a crime?

A. I plead guilty to a crime.

Q. Then you committed a crime.

A. Yes.

Q. The Board of Parole has the responsibility of making determinations as to when a person who has committed a crime is to be returned to the community based on their estimate of his readiness, change in attitude, and the possibility of his no longer becoming involved with the law as well as his ability to live up to the rules of parole. The District Attorney doesn't make that decision.

A. I didn't understand—

Q. Your attorney doesn't make such a decision. Many people may have opinions, many people may make recommendations, but this Board of Parole makes the decisions.

A. I understand that.

Q. And we deal with each individual, with each person as an individual. Each case is determined on its merits. The fact that you may have been instrumental in the return of the loot, which you were responsible for stealing, or some role in it, has some significance, but doesn't necessarily mitigate the situation. We don't lecture, the only reason I am speaking to you this way I gather from the record that you have the impression that you were going to walk into this Board today and probably walk out and on parole in the very near future, and wherever you got it from, you haven't got it clear and you haven't got it straight, and I am stating this to you—the members of the Board of Parole—that you will receive consideration, that you, an individual and a human being, and a person who has broken the law may merit, but there are no such things as deals or prior arrangements. This Board doesn't function that way.

CONTINUED

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COMM LEWIS:

Q. continued -

You committed a crime. There are some mitigating circumstances, all of which are taken into consideration, but there are no contracts or no deals. Somehow you didn't seem to get that message before now. I been reading the record here. You've had an attitude that this entire situation may have been cut and dried.

A. No, I never had that.

Q. But you got a 15-year sentence--

A. I realize that.

Q. and this Board after today's hearing will set a minimum period of imprisonment and at that time you'll come back to talk about parole and that doesn't necessarily mean you will be paroled at that time either. Now in making the judgment as to when a person should be paroled that is a responsibility of this Board. We look at many things. We look at what his past history has been, what his legal history is, and has been, what his attitude is, what his involvement and participation in the program in the institution is, what the opinion is of staff members--members of the institutional-staff with whom he comes in contact is, and then our assessment of his ability to go out and live up to the rules of parole and certainly not break the law. Now you may think some of those are a little vague.

A. They aren't.

Q. Because we are talking about human behavior. If we can put it on a scale and measure and observe it then things would be simple, but this is a matter of judgment, and this Board of Parole is doing this every day, day in and day out with hundreds of thousands of people. We try to be just, we try to be fair, we try to be equitable, but whatever consideration one gets from this Board is based on him as an individual, not on anything that he thought he transacted previously. I made a rather long speech to you, I don't generally make speeches to people who appear before this Board to whom I speak, but I think it needed to be made and needed to be made abundantly clear to you as is evidenced which I seen in these reports, what your attitude has been up to now, assuming that there is a cut and dried decision to be rendered in your case. Not so. Not so. Is there anything you want to talk about?

A. No, I can only say what I have, I have the affidavit, I was promised by people, I just found out from you that had no right to give me these affidavits.

COMM REGAN:  
COMM LEWIS:

Q. You have what?

Q. You have affidavits?

A. Yes, sir.

Q. Stating what?

A. That the deal was made with the insurance companies, Provident Loan Company, my attorney, District Attorney Mr. Mackel, if the stuff was recovered they would recommend very heavily.

Q. Recommend.

A. That, and the Parole Board would go with it. That the Parole Board would go along with the District Attorney's recommendation, give us parole and I realized then without the affidavit that I would have been out and--

Q. Because of cooperation with law enforcement this doesn't contribute to the major portion of the decision as to your readiness to return to the community which is what this Board is responsible for. There are many people in these institutions serving sentences a whole lot longer than yours for crimes which doesn't involve the sum that yours may have. It seems a little unusual for a person involved in a \$4,000,000 theft to be given different consideration to a man who may have stole a hundred dollars?

A. Well, actually that's not the crime I am here anyway.

Q. It's part of the entire picture. It's part of the entire picture. I don't want to prolong that aspect of it, but I wanted to be sure that you read me, and that you read me clearly.

A. What is your name?

Q. My name is Commissioner Lewis.

A. Lewis.

CONTINUED

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COMM LEWIS:

- Q. And I speak to you as the interviewing Commissioner, and I speak for this panel here, this Board of Parole before whom you are appearing, all of whom are familiar with your case and all of whom will participate in this decision which will be rendered after you leave the room, which will set a minimum period of imprisonment. I am the interviewing Commissioner, but the panel will make this decision. Now I think I have already described what your expectations are or the basis on which we make parole recommendations.
- A. You mentioned something about you watch whom I am with in the institution who I stayed with, I think you mentioned in your speech?
- Q. I didn't say that.
- A. I believe I understood it that way who do you happen to meet in jail.
- Q. There was no reference made with whom you associate with in the institution, although there may be significance in that. Are you a good person in jail?
- A. How do you mean good--I go break rules?
- Q. That's exactly what I am saying, how you get along in jail. Are you a good person?
- A. No.
- Q. Do you think then there are only bad people in jail?
- A. No.
- Q. There may be other people in jail.
- A. How do you meet them? How do you know who to meet in jail.
- Q. One has to be selective, you know you talk to me as if you expect some tremendous insight, you are not a stupid man, you are a man with better than average intelligence, and I think you know what I am talking about. As far as whom you associate with in this institution, every man has to make his decisions as to his associates in whatever setting, be a penal institution, be in the military service, or be at liberty in the community, but your associates within the institution aren't that significant though I wouldn't say disregard it, I am talking about participation in whatever program exists, I am talking about your attitude also, any man's attitude in our assessment of what his attitude may be in terms of further criminal involvement, I am talking about his attitude towards the staff of the institution with whom he comes in contact with, we don't as a Board come in regular contact with you except when you appear before us, but there are reports submitted to us by both the Correction Department staff with whom you are in contact with as well as by the Parole Division staff with whom you are in contact with. All this has tremendous importance, combined with other reports that we have in your evaluation on you, we look for your participation in the program, signs of change that we look for in a man because as far as we are concerned the fact that you were convicted and committed would indicate to us that there is need for change. The pattern is wrong if the man winds up in prison. There has to be some evidence to us, that influences us, that comes to us as a process of training, experience and long involvement with people in trouble. We don't have any crystal balls, but we have experience, much training, and a good deal of knowledge. So that these are the things that we look for. We always take into consideration the gravity of the crime of which you were convicted and others you may have been involved in, or suspected of. We have the responsibility, Saltman, mandated by the law: one is rehabilitation of the individual and the other is protection of society. And protection of society is our primary function. Whenever that is threatened or we think it's being threatened then the rehabilitation of the individual becomes a secondary factor.

COMM LEWIS: Do you have anything you want to say to him, Commissioner?

COMM REGAN: No, sir.

COMM LEWIS: Commissioner Gross?

COMM GROSS: No.

CONTINUED

54.

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COMM LEWIS:

Q. Is there anything you want to ask us?

A. No.

Q. We will set the date.

A. I am stunned.

Q. We will set the date, and you will be notified.

DECISION: Minimum Period of Imprisonment is established as five years.

SING SING PRISON - JUNE 1970 BOARD - REGAN, LEWIS & GROSS/pjs  
(Held June 3, 1970) RIVERA



-----X

Ind. No. 1458/69

AMENDED AND  
SUPPLEMENTAL  
AFFIDAVIT TO MY  
MOVING AFFIDAVIT  
HEREIN.

Defendant

-----X

THOMAS PALERMO, being duly sworn, deposes and says:

2. I submit this amended and supplemental affidavit to my

3. It is imperative to submit this further affidavit since my moving papers failed to include many essential facts to demonstrate the involuntary nature of my guilty plea and does not set forth the additional legal grounds, some of constitutional dimension, which should have been brought to the Court's attention by my then attorneys, Bobick, Deutsch and Schlessner, Esqs. (Edward Bobick, Esq. of counsel).

4. On November 13, 1970, in open Court, Edward Bobick withdrew as my attorney. My new attorney, Hyman Bravin, Esq., 6

**BEST COPY AVAILABLE**



East 45th Street, New York, N. Y. 10017, informed the Court I was considering the argument of inadequate assistance of counsel as a potential ground in support of my application to withdraw my plea of guilty. The hearing was adjourned to December 18, 1970 and subsequently advanced to December 11, 1970.

5. I now charge and so aver that my former attorneys who represented me in all pre- and post-indictment phases of this case, rendered inadequate and ineffective assistance of counsel in that : a) they did not properly advise me as to my responsibilities to become involved in negotiations instituted by the Queens District Attorney with me for the return of property alleged to have been stolen from the Provident Loan Society on February 17, 1969; (b) they failed to properly safeguard my interests in the agreement which was made with the Queens District Attorney based upon said negotiations; (c) they advised me to plead guilty to Robbery in the third degree, which advice was incorrect and contrary to my interest; d) they did not include in the moving papers herein many relevant and essential facts to demonstrate the factors which contributed to forcing me to enter an involuntary plea to guilty to a crime I did not commit; e) the said moving papers herein were otherwise defective and improper; (f) they failed to properly prepare for the hearing on the instant application.

The foregoing charges are substantiated factually herein.

#### FACTS

##### Background

On the morning of February 17, 1969, I received a phone call from Sheldon Saltzman, who was a co-defendant with me in a robbery case then being tried in Staten Island. He said he would be late



in picking me up for court since he had a car accident. I asked my wife, Ida Palermo to call the Court and explain we would arrive late.

After trial had been in progress for a few days, I was informed by my then attorney, Jacob Esveroff, Esq., 168 Joralemon Street, Brooklyn, that my co-defendant Saltzman was identified tentatively for an alleged crime that took place in Queens on the morning of our late arrival to court. Mr. Esveroff volunteered that I was not identified but was a possible suspect because Saltzman was a co-defendant with me. I told him I was willing to stand in a line-up. He told me that it wasn't necessary that he understood some of the victims of the robbery had been in court but that I was not identified. I heard nothing concerning the Queens robbery until the morning I went for sentencing.

#### PLEA NEGOTIATIONS

I was in the bull pen with Saltzman. My attorney, Saltzman's attorney, William A. Smith, Detective Captain John J. O'Connor and Queens Assistant District Attorney Thomas Demakos came to see us. Mr. Esveroff told me Captain O'Connor was his good friend and the Captain and A.D.A. Demakos were there to help me. He told me to listen to what they had to say and not to say anything. They told me they had information I had possession or knowledge of the location of the Provident Loan Society stolen merchandise. They said they had spoken to the Richmond District Attorney and also to Mr. Justice Michael Kern, who had agreed if I returned or influenced the return of the stolen merchandise that Justice Kern would sentence me to ten years and Saltzman to seven or less. They explained: they tried to do better but the judge wouldn't go any lower; that considering all the circumstances and especi-



ally my past record that this wasn't a bad deal; that if I helped obtain the return of the stolen merchandise, I would not be arrested in the Queens robbery. I told everyone I didn't know what they were talking about and I couldn't be of help to them. The scheduled sentencing was postponed to a later date.

While I was waiting to be sentenced in the Richmond case I was lodged in the New York County Tombs. One Saturday, at about 11 a. m. Mr. Esveroff visited me and said the Queens D. A. had communicated with him and wanted me to stand in a line-up. I felt instinctively that there was something improper. I refused for good and substantial reasons.

Thereafter I was served with legal papers by the Queens D. A. to show cause why I shouldn't shave and stand in a line-up. I decided I needed another attorney. I retained Edward Bobick. The application was denied.

Mr. Bobick represented me in the Staten Island sentencing. He also appeared for Saltzman. On or about May 21, 1969, Saltzman and I were arrested as co-defendants in the Queens robbery. I had a discussion with Saltzman concerning the Queens robbery. He said he was in a position to have the merchandise returned, but I shouldn't question him any further. He asked me to negotiate for the return of the merchandise and I should try to make the best deal I could for the both of us. He, however, would reserve the right to overrule any deal I made. This was the first time I learned Saltzman might have some, direct or indirect, relationship with the Queens robbery. I spoke to Mr. Bobick and told him I might be in a position to obtain the recovery of the stolen merchandise. I asked him if I became involved



would it hurt my defense since I was innocent. He said he would get me immunity. I told him that he would have to make a better deal than was previously offered. Some weeks later Mr. Bobick told me that he worked out a deal. He told me he could get me seven years and five years or less for Saltzman, together with a \$100,000 reward. I discussed this with Saltzman and the deal was rejected.

The Staten Island sentencing was adjourned a number of times. One day Mr. Bobick came to the Tombs and said he had received a final offer: it was five years for me, three years or less for Saltzman and a \$100,000 reward was still part of the deal. Saltzman said he would accept this offer. I went along with it.

On June 27, 1969, before we went into the Staten Island court, Mr. Bobick came into the bull pen and said that Queens A.D.A. Demakos had hurt his back in an accident, and wouldn't appear. They sent over Queens A.D.A. Guadillo, who rejected the five and three year sentences deal. Mr. Justice Kern said that without the consent of the Queens D.A. he would not consider it. We were told either we went along with the previous offer or Justice Kern would do as he felt was indicated. We declined. I received a twenty-five year sentence and Saltzman fifteen years. We were transferred to Sing Sing Prison.

Shortly thereafter, we were brought to Queens County to face the robbery charge. Mr. Bobick came up with another proposition. He told me he could have my Richmond twenty-five year sentence reduced to seven years and five years for Saltzman. We would still get the \$100,000 reward. He assured me if we took this deal both of us would be paroled in a year's time, (we would be housed in Sing Sing or Green Haven) but we had to



plead guilty to the Queens robbery for which we would receive a suspended sentence or conditional discharge: I would be allowed to plead guilty to a misdemeanor in the Utica case and the charge against my two co-defendants there would be dismissed.

Mr. Bobick told us the one year parole deal was better than the five and three years deal we wanted to make. He pointed out we could be on the street in a couple of months. He also told me if we wanted a five and three years sentence I would not receive the deal on my other cases or a suspended sentence or conditional discharge on the Queens robbery. I told Mr. Bobick that he should concentrate on the Richmond sentence. That this should be upper-most in his thoughts at all times. Mr. Bobick told me that through a certain provision of the law he would be able to get us resentenced in Staten Island. We told him we were ready to go ahead with the deal. Mr. Bobick then left to make the final arrangements.

During this time, without being invited, my discharged attorney Jacob Esveroff and Captain John J. O'Connor visited me. They came a number of times. I saw them together and a couple of times I may have seen them individually. On one occasion when Mr. Esveroff and Captain O'Connor visited me, they explained the Staten Island authorities would not go for the motion to resentence. I said Mr. Bobick assured me I would be resentenced and certain other conditions would be granted. They told me Mr. Bobick was lying. They said the offer of \$100,000 reward was also a lie. Mr. Esveroff told me that there was a \$50,000 legal fee being offered him if I co-operated with him in the recovery of the stolen property. He said he could get me the best deal. Captain O'Connor left to make a phone call.



When Captain O'Connor came back he told me the deal he was able to make for us. He said he couldn't do anything with the Staten Island sentences, the twenty-five and fifteen years would have to stand. I told him my real interest was in the Staten Island sentence; otherwise forget it. He said he couldn't get us resentenced but that we could be released on parole in 1970 -- but we would have to do five years parole. I objected to the five years. He said this was the law and you couldn't get around it. He assured me I would not be charged with a technical violation of the five years parole, but if I was convicted of a new crime, of course, the parole would go into effect. After all, he said, they couldn't give me a license to steal or commit crimes during the five years parole. He assured me, at the end of five years, the parole would be dropped. We then discussed the question of my going to a foreign state with the possibility of having the five years parole reduced to a one year out of state parole. Captain O'Connor said he couldn't see any objection if the receiving state would go along with it.

He said, in addition, though it hadn't been mentioned before, the Queens assault case against me would be dismissed, and the Utica case might be dismissed or I would plead guilty to a misdemeanor and receive a suspended sentence. I said I was interested in the part about the Utica deal but the case must be dismissed as against my co-defendants. Captain O'Connor said that would be no problem.

I then asked, how they could guarantee the parole and the conditions he stated. He assured me the Queens District Attorney's office would protect me. I told him that my experience with the Parole Board was that they wouldn't listen to anyone. I was of the opinion that the



Parole Board was under no obligation to listen to anyone. Captain O'Connor went out to speak to Chief Assistant District Attorney Ludwig who was in the reception area of the Queens House of Detention. Upon his return he told me Mr. Ludwig just phoned Albany and spoke with Parole Commissioner "Howard" Jones who assured Mr. Ludwig that if we co-operated to secure the return of the stolen merchandise, the Parole Board would go along with any promise or recommendation made by the Queens D. A.. Captain O'Connor also said Commissioner Jones told Mr. Ludwig that he could inform us, if we didn't co-operate with the Queens authorities the fact that we entered into negotiations would indicate to the Parole Board that if we were not guilty, at the very least, we had knowledge of the crime. If we didn't co-operate, even if we were acquitted in the Queens robbery case we should not expect to get parole on our Staten Island sentence or any other sentence that may be imposed upon us in any other case. Mr. Esveroff was present during this conversation. I questioned Captain O'Connor about the manner in which to handle the Utica cases. Again Captain O'Connor left and spoke to Chief A. D. A. Ludwig. Upon his return he told me Chief A. D. A. Ludwig spoke to the Oneida District Attorney Arthur A. Darrigrand, who said he would co-operate with the Queens D. A.. I told Captain O'Connor I needed time to think it over and had to talk to Saltzman. He told me I had only 72 hours; otherwise, the deal would be withdrawn. He cautioned me <sup>that</sup> Chief A. D. A. Ludwig said if I didn't accept the deal by then that it would never be reoffered to me.

I communicated with Mr. Bobick and asked him to come to see me. I told him Captain O'Connor and Mr. Esveroff said he was lying to me and misleading me: I was not to be resentenced in Staten Island; there were no other concessions; there was no \$100,000 reward. Mr.



Bobick claimed they were lying. He assured me there was a deal. He told me if I wanted reassurance that he would bring in Norman Rein of the law firm of Rein, Mound and Cotton, the attorneys who represented the Provident Loan Society. I told Saltzman of my conversation with Captain O'Connor and Mr. Esveroff. He told me that he would not accept their deal and wouldn't assist me in the recovery of the stolen valuables. He told me we should stick with Mr. Bobick.

Captain O'Connor and Mr. Esveroff came again to the prison and asked if I was interested in Ludwig's deal. I asked them to bring Saltzman down and explain the deal to him. Saltzman came down. They explained the deal. He rejected it. I went along with Saltzman. Captain O'Connor and Mr. Esveroff told us we were making a big mistake: Mr. Bobick was lying to us; the D.A.'s office was getting sore at us. Captain O'Connor told me Chief A.D.A. Ludwig was a rough man and was no one to have mad at us. When they left they told us to contact them if we changed our minds. I am not too sure how much time elapsed, but a time did come when Mr. Bobick and Mr. Rein came to see me. They told me they could get the same deal offered by Mr. Ludwig, plus the \$100,000 reward; we would be housed in the New York County Tombs where we would be entitled to five visits a week; and we would be kept at the Tombs and transferred only to Sing Sing to see the Parole Board.

Mr. Bobick told us there would be no Richmond resentencing but that there was a meeting of the parole commissioners with members of the Queens D.A.'s staff. He explained we could not make parole in one year; that we would have to serve eighteen months. I questioned Mr. Bobick about the make-up of the State Board of Parole



and the manner in which the Parole Board operated. Mr. Bobick and Norman Rein (as well as Mr. Esveroff) on separate occasions stated that they were certain the State Board of Parole would approve the Queens D.A.'s recommendation. Mr. Bobick gave me detailed facts to back up his representation.

*Then the pressure was really put upon me.*  
Sometime in October, 1969, it is possible it was on

October 24, 1969, I saw Mr. Bobick, Mr. Norman Rein and Captain John J. O'Connor. When I saw Captain O'Connor with Mr. Bobick, I was convinced that Captain O'Connor no longer accused Mr. Bobick of misleading me and lying to me. They warned me this is the last chance. I had to make a deal as time was running out. They told me many Provident Loan Society customers were suing Provident Loan Society for their missing valuables and that if Provident Loan Society had to pay off the claims, they might have to go out of business. Before this happened, they would back away from the deal and the Queens D.A.'s office would go ahead with the prosecution and there would be no deal. They cautioned me that investigations concerning my complicity in other crimes would be completed and my wife would be arrested and my four children placed in a foundling home. At this time I said, "We were to be framed." Someone told me let's not deal in technicalities. They also said it would work out so as to make me look as if I was an informer.

I then remembered, that in the past, threats had been made to mutilate my children. Also the police's unlawful search of my home, at an early hour, had frightened my children. When these events had taken place, I sent for Captain O'Connor. I asked him what was going on. I told him my wife and family had been receiving threatening phone calls. They were scared. Some of the parties who called said they would kidnap my children and send back "a piece at a time"



to my wife. Captain O'Connor indicated he was well aware of these threats. He urged me to co-operate with him. He told me that he was sure that my wife wasn't telling me everything because she didn't want to upset me. He offered to bring some of the phone recordings he had. I refused to expose myself to this type of torture. Captain O'Connor told me that he was aware of the trips that my wife had taken to Puerto Rico and Pennsylvania in order to avoid these threats. He also knew that my children were losing time in school and that my oldest daughter had suffered a nervous breakdown and was now under the care of a psychologist. I was very concerned about what was going on. I had a suspicion that the police were behind it when my wife told me that a few weeks before some police detective passed himself off as a friend of mine and spoke to my mother about my legal difficulties. I figured that if they could pass themselves off as friends they could also play the other role. Captain O'Connor's parting remark when he left me was, "You should co-operate with us before it is too late and your family is hurt." He did not explain what he meant by the word "hurt." I was worried and frightened at that time and was afraid that if I didn't go along with the deal that my children would be mutilated. These thoughts ran through my mind when I spoke to Mr. Bobick, Mr. Rein and Captain O'Connor on October 24, 1969.

✓ I was concerned that if I played a role in the role in T.I. the return of the stolen goods, would I be getting involved with the Provident Loan Society robbery. Previously Mr. Bobick assured me that I would be protected. To reassure myself, I asked again that if the stolen goods were returned would my wife and I and others have immunity. They said that not only would the Queens D.A. grant us immunity, but that in addition no questions would be asked and no



arrests made for the Queens robbery or any other crime then being investigated.

*Adm - [unclear]*  
This <sup>ATTENTION</sup> observation is pertinent at this time. During all of the negotiations, Captain O'Connor always kept threatening me that if I did not make the deal they would arrest me on other charges. During this period of time whenever I saw Captain O'Connor he would clumsily drop the hint that the investigation was started -- was continuing -- they were making progress -- the investigation was almost terminated and that they were about to make arrests -- and, of course, at all times he would let me know that I was the prime suspect.

I then asked if I could have this deal in writing. Mr. Rein said it was impossible; that none of the officials would put anything in writing; they were honorable people; if there was to be a deal, someone would have to be trusted; because of the situation, I would have to be the one to do the trusting. I spoke to Saltzman. He told me to make the deal. Mr. Bobick assured me that we would not be double crossed and all of us would be legally protected. Mr. Rein volunteered that if there were any problems he would come forward to the Court and explain the full terms of the deal. He told me he would never abandon me until I was free, but once we were free he was through with us. *T.P.*



### PLEA TAKING AGREEMENT

Before I was ready to commit myself, I asked them to restate the deal. I was represented by Mr. Bobick, Mr. Norman Rein represented the aggrieved party, Provident Loan Society, and Captain John O'Connor represented the Police Department, City of New York and he was also acting for the interest of the Queens D. A.'s office. The deal was summed up as follows: I was retained by the Queens D. A.'s office on a contingent basis. Upon the return of the missing property of the Provident Loan Society I was to receive the following considerations: first, Saltzman and myself were to be paroled on our Richmond sentences after serving a maximum time of eighteen months; I would plead guilty in the Utica case to a misdemeanor, receive a suspended sentence and the case would be dismissed as against my co-defendants; Saltzman and I would plead to a lesser charge in the Queens robbery and receive a suspended sentence, the Queens assault case against me would be dismissed; a reward of \$100,000 would be paid by Provident Loan Society or someone else on their behalf to a person of my choosing, condition<sup>ed</sup> - that it should not go to a member of my family and that whoever received it would sign a statement that I would not receive any benefit therefrom.

After some discussion it was agreed that this was the deal and it was accepted by all parties.

They then left to obtain a court order to be prepared by the Queens D. A. so that I could obtain permission to leave the Queens House of Detention and make the necessary arrangements for the return of the missing property. I returned to my cell.



Shortly thereafter I was brought down to the counsel room. The same three individuals were there. They told me that the deal could not go through as agreed; they claimed that D.A. Mackell just found out about the cash reward and he refused to be a party to any deal where a cash reward would be paid even if it was to be paid to someone else as we had previously agreed. I was also told that D.A. Mackell said I had "a choice to make -- either our freedom or a reward, but I couldn't have both. I didn't like this change in the agreement but I went along with it. I wondered then -- and I wonder now who made himself a \$100,000 -- which was supposed to have gone to me." At this time Mr. Bobick related to me that Mr. Rein said he would see to it that Bobick was paid a \$25,000 fee. I was happy for Mr. Bobick's sake. I thought it was unusual for a lawyer to accept a fee from his adversary -- but then again -- I have been fighting this system all my life. They waited for my comment concerning the withdrawal of the \$100,000 reward. They said the choice was ours to make. Mr. Rein assured me that D.A. Mackell told him if we accepted the deal without the cash reward that D.A. "Mackell would make it his career to get you out of jail." I took the responsibility on my own shoulders to make this deal even though there were problems created with the elimination of the cash reward. I agreed <sup>tentatively</sup> to the new deal. The parties left again to arrange for my release. <sup>During their absence</sup> I told them that up to now I was dealing with my attorney, the attorneys for the Provident Loan Society and the Police Department. I wanted assurance from the Queens D.A.'s office that a deal was a deal - and I did not want any more changes made.



An hour later I was taken to the D. A.'s office by some detectives. This time I met Chief Assistant District Attorney Ludwig. I asked him what the deal was -- he told me essentially the same thing as related to me before. At this face to face conference with Mr. Ludwig, the following people were present: Mr. Rein, A.D.A. Guadelli, Mr. Bobick and his wife, Marianne, Captain O'Connor, Detective McQueen and Detective Moriarity (there were other people present, I can't remember their names and some of them I did not know). I was convinced that Mr. Ludwig was acting in good faith. I agreed to the deal and so did he, it was conditioned that the property be returned.

I was permitted to make several phone calls. Then, they took me out to a steak dinner and I had some scotch. We left for Manhattan. We arrived at a certain place, I opened a trunk of a car and took out a suitcase which contained jewelry and other valuables. I gave the suitcase to Mr. Bobick, who gave it to Mr. Rein, who in turn gave it to a detective.

I was then taken back to the Queens D. A.'s office. I was "thanked" and given a few more drinks. I was feeling good when I was brought back to the Queens House of Detention. I had kept my word as a man -- now it was the Queens prosecutor's obligation to keep his word.

The next day the Queens D. A. announced the "recovery of stolen diamonds and jewelry valued at \$4 million --- the largest recovery of stolen property in the history of law enforcement." His press release dated October 25, 1969 consisting of five (5) pages is attached hereto and marked Exhibit "A".



### D.A. UNILATERALLY MODIFIES AGREEMENT

Throughout our negotiations it was understood that the basis of the entire agreement was the parole on the Richmond sentence. It was understood that after this was accomplished that everything else would fall in line. We were waiting for the Parole Board to meet sometime in April of 1970.

Sometime in March or April of 1970 I was taken by four or five detectives to the JFK airport where I met my attorney and my wife Ida Palermo. We flew, in the company of some detectives, to Utica. I had assumed that the Queens D.A. wanted to get the Utica case out of the way rather than just mark time and wait for the New York State Board of Parole to meet on the question of the Richmond sentence as it concerned Saltzman and myself.

Upon our arrival we learned that the Queens Prosecutor had not done a thing about the Utica case. The Oneida D.A. offered me a different deal. I refused to go along with it. A detective on D.A. Mackell's staff called his office and told someone that the Oneida D.A. would not honor D.A. Mackell's commitment to me. This detective was told not to do anything further and come back. I returned to the Tombs not realizing the full significance of what had happened.

Mr. Bobick assured me that it was a slip up -- and I shouldn't worry -- since it was a solid commitment.

Sometime later Mr. Bobick, after exchanging amenities and pleasantries told me that the Queens D.A. wanted me to take a plea to the Queens Provident Loan Society robbery -- I told him I did not do it. He told me, what are you concerned about, "You're going to get a suspended sentence." I told him that he did not understand the full deal if he wanted me to plead to the Queens robbery now. I told him that the Queens robbery plea was a last



showed it to Saltzman and a number of other individuals, many of them who were experienced in the hypocritical ways of plea-bargaining. (A copy of this affidavit it annexed and marked Exhibit "B".) I must have shown it to at least ten inmates many of whom have the reputation of being jail-house lawyers. They all assured me that if my lawyer or the Queens prosecutor double-crossed me I would be protected, in the event things did not work out the way they should before the State Board of Parole. Incidentally, besides showing it to the inmates I also showed it to one of the guards, because he was a decent human being and showed an interest in the welfare of the inmates.

The next time I saw Mr. Bobick was on April 16, 1970. We appeared in Court for the pleading. When I found out we were going before Mr. Justice Farrell, I told Mr. Bobick I would not plead in front of him. I expressed my doubts about the judge's impartiality. Parenthetically, I <sup>was</sup> instructing my present attorney on the return T.P. date of this motion, December 11, 1970, to ask the learned judge to disqualify himself. Continuing with what happened on April 16, 1970 -- Mr. Bobick told me that Justice Farrell was the senior judge and wanted the case to remain in front of him. Mr. Bobick assured me that Justice Farrell will go along completely with the deal. He told me to trust the judge and what was I worried about as I had his sworn affidavit. I agreed. Mr. Bobick instructed me should the judge ask me if any promises were made as to the term of a sentence that I was to say, "No" -- but I shouldn't worry as Saltzman and myself would receive suspended sentences. The Court failed to ask me any questions about promises that were made to me to induce my plea of guilty. The

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IN FAIRNESS TO MR. BOBICK - THIS TYPE OF PLEA-BARGAINING  
\* ADVISE IS A COMMON PRACTICE AMONGST LAWYERS AND IS  
DONE WITH THE KNOWLEDGE AND CONSENT OF D.A. AND J.D. THE  
NEW YORK STATE HIGH TAXING CHARGES BEFORE THE COURT IS AN INDICTION  
OUR SYSTEM OF JUSTICE

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Court asked me certain questions and I answered, "Yes." He then asked me a couple of questions to which I couldn't give a "yes" or "no" answer at which point I told my lawyer, loud enough for the Court to hear, "I would not plead if I had to answer anything but "yes."

It is significant that the certified transcript of the minutes of that hearing did not reflect my remarks. The minutes do indicate that there was a bench conference. What my lawyer said to the judge or the judge said to my lawyer I don't know, as of this time. The record will disclose that there is no factual basis in the colloquy which took place on April 16, 1970 between the Court and myself to indicate that I admitted my guilt to robbery in the third degree. Immediately after Saltzman and myself pleaded we went to the probation officer. The sentence had been put off until July 7th 1970. When I appeared before the Probation Officer I refused to make any statement and told him, in substance, that I did not have to make a statement since I was to receive a suspended sentence from the Court on my plea of guilty.

Thereafter an order was signed sending us to Sing Sing to see the State Parole Board which was scheduled to meet the week of April 28, 1970. On April 27, 1970, Mr. Bobick came to Sing Sing with an order to show cause to move us from Sing Sing to Queens so that we would <sup>AVOID BEING</sup> ~~not~~ be present for the Board of Parole meeting <sup>T.P.</sup> scheduled for the next day. Mr. Bobick explained the reason he wanted to get us out of Sing Sing was that he didn't want us to appear before the State Board of Parole since one of the Commissioners, "Howard" Jones would not be present. Eventually, we were returned to Sing Sing. Before I appeared before the Parole Board, Mr. Bobick



said not to worry, that everything would work out all right, except that he would have felt better if Commissioner Jones was present. At this time I became very worried. I told Mr. Bobick that if the Board questioned me I was going to tell them that as far as I knew they were to parole me now. Mr. Bobick told me that was exactly what I should do. I appeared before the Parole Board and that is exactly what I did. I told them everything about the deal. I informed the Commissioners that I was advised that Chairman Oswald and Commissioner Jones had already made a commitment to parole me. Some of the Commissioners told me I must be mistaken. I assured them I wasn't. They asked me if I had this agreement in writing. I told them I had an affidavit wherein <sup>part of</sup> this is all set forth. The conversation was then dropped. They assured me that they never make any promises to anyone. That all they ever did was explain what the legal possibilities were. They told me that no one tells the Parole Commissioners what to do. It was clear to me that by following the advice of Mr. Bobick and telling the Parole Commissioners the true story that I created an adverse impression with them as to my attitude towards society and toward authority generally and specifically of my attitude toward those who had arrested, prosecuted and sentenced me. The end result was the State Board of Parole subsequently instructed me to return in six years and my co-defendant Saltzman in five years before they would consider our case.

Thereafter, Mr. Bobick came up to Sing Sing. I related what happened. He didn't know what went wrong and was confident that something would be worked out when we were brought back to Queens for the sentencing. We then decided that he should ask for a months postponement of the sentence and that if the Queens prosecutor



wouldn't comply with his commitment that I wanted Mr. Bobick to withdraw my plea of guilty. The situation was explained in Court on the record and we asked for the postponement to try and rectify matters. *(MY ATTORNEY HAS NOT HAD HIS OPPORTUNITY TO VERIFY THIS.)* T.P.

#### D. A.'S "BEST EFFORTS"

A.D.A. Jerome M. Pines in an affirmation dated October 8, 1970 in substance takes the position that the only promise that D. A. Mackell made to Mr. Palermo was that if Palermo was instrumental in returning \$4 million worth of valuables that he, the Queens County District Attorney, Thomas J. Mackell, would use his "Best Efforts" to assist Thomas Palermo in his many criminal court problems. This is ludicrous. I am 29 years old - I have spent ten years of my life in prison - I regard myself as an experienced and hardened bargainer. In this case the Queens D.A., his chief assistant and two top notch ADA's represented the people of New York. Upon information and belief, they also received counsel and advice from <sup>2</sup>learned and distinguished members of the judiciary. T.P. My crew of jailhouse lawyers and myself are no competition for this high class legal talent.

Yet - I am sure that no court in this land - will find as a fact that I am stupid enough to become involved in a transaction in which not only does my liberty depend, but my entire life - where I would trade \$4 million of valuables for the Queens District Attorney's "Best Efforts." Obviously, my version is correct.

#### I AM INNOCENT

I am innocent of each and every count of the indictment and robbery in the third degree to which I pleaded guilty on April 16, 1970.

*I Relied on the D.A.'s promises  
MADE TO ME. T.B.*

I pleaded guilty for the reasons aforesaid. I don't know if the Queens D. A. lied to my attorney OR - if my attorney lied to me. In any event, when I agreed to return \$4 million of valuables and subsequently pleaded guilty to robbery in the third degree, I did all of these things in order to win parole on my 25 year sentence in Richmond County.

I ask that my application herein to withdraw my plea of guilty and interpose a plea of not guilty to robbery in the third degree be granted. That should the learned court fail to grant this motion a manifest injustice will be done.

WHEREFORE, I respectfully pray for an order granting the relief requested herein, for which partial relief in a previous application was made returnable in this Court on APRIL 23, 1970, *AND THEN IT WAS WITHDRAWN ON MAY 1, 1970.*

*Thomas Palermo*  
Thomas Palermo

Sworn to before me *11*  
this 11th day of December, 1970

*[Signature]*  
JOHN L. HAYES  
Notary Public, State of New York  
No. 6216501-41  
Qualified in Queens County  
Commission Expires March 30, 1972



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS, CRIMINAL TERM

✓ Refect Justice Farrell

-----X  
THE PEOPLE OF THE STATE OF NEW YORK

- against-

THOMAS PALERMO,

Defendant.

Indictment No.  
1458/69

-----X  
S I R:

Upon the annexed affidavit of THOMAS PALERMO,  
duly sworn to on the 30 day of September, 1970, and upon the  
annexed affidavit of EDWARD BOBICK, duly sworn to on the 24<sup>th</sup> day  
of September, 1970, the undersigned will move this Court,  
before the Honorable Justice Farrell, at the Courthouse thereof  
located at 125-01 Queens Blvd. , Queens, New York, at a Trial  
Term thereof, on the 9<sup>th</sup> day of October, 1970 at 10 o'clock  
in the forenoon of that day or as soon thereafter as counsel  
can be heard for an Order permitting the defendant, THOMAS  
PALERMO to withdraw the plea of guilty previously entered  
herein and to enter a plea of not guilty to the charges under  
this indictment.

Dated: New York, N.Y.  
September 24, 1970

YOURS, ETC.

BOBICK, DEUTSCH & SCHLESSER  
Attorneys for Defendant  
Office and P.O. Address  
149 West 72nd Street  
New York, New York 10023

TO: THOMAS J. MACKELL, ESQ.  
District Attorney  
Queens County

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS, CRIMINAL TERM

----- -X

THE PEOPLE OF THE STATE OF NEW YORK

- against-

THOMAS PALERMO,

Defendant.

----- -X

State of New York )  
County of New York ) SS.:

THOMAS PALERMO, being duly sworn, deposes and says:

That I am the defendant in the within matter and make this affidavit in support of a motion to vacate and set aside the plea of guilty previously entered on the 16th day of April, 1970 before the Honorable Peter T. Farrell, at Criminal Term, Supreme Court of the State of New York, County of Queens.

That on the 24th day of October, 1969, my attorney Edward Bobick together with Norman Rein of the firm of Rein, Mound and Cotton, Frederick Ludwig, Chief assistant District Attorney of Queens County and Thomas Mackell, District Attorney of Queens County, met in the office of Mr. Mackell to discuss the aid and assistance your deponent was about to offer the District Attorney of Queens County by assisting in the recovery of the proceeds from a robbery of the Provident Loan Society's office, Hillside Avenue, Queens, New York, on February 17, 1969.

That Mr. Mackell and Mr. Ludwig promised that at the time of your deponent's appearance before the parole board in connection with a sentence your deponent was serving at that time, Mr. Mackell would personally appear before that parole board and advise the board of your deponent's cooperation and would strongly endeavor to obtain a mitigation of the time which your deponent would have to serve to satisfy the parole commission with regard to that sentence.



Additionally, Mr. Mackell promised to take care of a charge pending against your deponent in Utica, New York, which has not yet been disposed of, as well as other considerations, with the understanding that your deponent was to give up any claim to the reward of One Hundred Thousand (\$100,000) Dollars which was previously offered in addition to your deponent's cooperation.

That upon the representation made by Mr. Mackell and Mr. Ludwig, the representations of Mr. Ludwig reaffirming the conversations with Mr. Mackell, having been repeated before Eugene Leiman, Esq. and Arthur Brook, Esq., members of the firm of Rein, Mound and Cotton, as well as Norman Rein, Esq. and Edward Bobick, Esq., your deponent's attorney, your deponent agreed to and did arrange for the return of the property previously mentioned.

Pursuant to the above arrangement, your deponent took a plea on April 16, 1970 before the Honorable Peter T. Farrell, and an order was prepared ordering your deponent to Sing Sing Prison, Ossining, New York, for the purpose of meeting the parole commission on April 28, 1970, and then returning your deponent to the New York City House of Detention.

That in fact Mr. Mackell refused to appear before the said parole commission and the said commission was never advised of your deponent's cooperation with the office of the District Attorney of Queens County and the extent of the said cooperation.

That the plea of guilty heretofore entered in Queens County, Supreme Court, was obtained on the assurances made by Mr. Mackell and Mr. Ludwig to Edward Bobick, your deponent's attorney and to the other attorneys hereinabove mentioned. That the actions of Mr. Mackell violated the word of a public official and will create irreparable harm to the defendant, your deponent, should the plea presently pending in this case be allowed to stand,

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WHEREFORE, it is respectfully requested that an Order be executed that the plea previously entered herein be withdrawn; for a hearing as to whether or not said plea should be withdrawn, and for such other and further and different relief as to this Court may seem just and proper.

Thomas Palermo

THOMAS PALERMO

Sworn to before me this  
30 day of September, 1970.

Edward Schick

EDWARD SCHICK  
Notary Public, State of New York  
No. 60-5061433  
Qualified in Westchester County  
Cert. Filed with N. Y. County Clerk  
Commission Expires March 30, 1972

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THOMAS J. MACKELL  
DISTRICT ATTORNEY

Office of the  
District Attorney  
of Queens County  
QUEENS CRIMINAL COURTS BUILDING  
125-01 QUEENS BOULEVARD  
KEW GARDENS, JAMAICA, N. Y. 11418  
TELEPHONE: 261-6200

October 25, 1969

FOR IMMEDIATE RELEASE

QUEENS DISTRICT ATTORNEY MACKELL  
ANNOUNCES FOUR MILLION DOLLAR  
RECOVERY OF STOLEN DIAMONDS---  
LARGEST IN HISTORY OF LAW ENFORCE-  
MENT.

Queens District Attorney Thomas J. Mackell announced today recovery of stolen diamonds and jewelry valued at \$4 million --- the largest recovery of stolen property in the history of law enforcement. The diamonds were displayed in District Attorney Mackell's office today. The jewelry was stolen in a hold-up on February 17, 1969 from the Provident Loan Society in Jamaica, Queens. The Provident is a charitable, tax-exempt lending organization incorporated in New York in 1894. The jewelry represents pledges of almost 2100 persons in exchange for small loans. Two robbers involved in the hold-up have been indicted in Queens for the crime on June 24, 1969. They have been in custody since the date of the crime, because of a trial that resulted in conviction for another robbery in Staten Island.

District Attorney Mackell said that the recovery of this property has been the result of painstaking negotiations by his office. These were frequently frustrated because the District Attorney would not countenance any arrangement under

which a thief would benefit from any reward from any insurance company. Nearly all of the jewelry was uninsured, the loan value of the proceeds -- \$545,984 --- was however insured but the beneficiary was the Provident Loan and not the pledgors.

The robbery took place on Monday morning, February 17, 1969, about 10:00 A.M. at the Jamaica office of the Provident Loan Society, 168-32 Hillside Avenue, Queens. At the moment the robbery took place, two of the perpetrators were scheduled to stand trial in the Staten Island Criminal Court for robbery of \$11,000 from occupants of a house. When they appeared later in the day for trial, they were remanded by Supreme Court Justice Michael Kern. Subsequently, both defendants were convicted.

The defendant Thomas Palermo, 27, 44-05 Newtown Road, Astoria, was sentenced by Judge Kern to 25 years' for the Staten Island robbery. His companion, Sheldon Salzman, 32, 116-30 New York Boulevard, Jamaica, was sentenced to 15 years for the same robbery.

The robbery of the Provident Loan occurred while the two defendants were on their way to the Richmond Courthouse. Salzman approached three employees of the Provident Loan in a teller's cage and asked, "Can you change a ten dollar bill?" The employees were Ronald Yagud, 87-80 146th Street, Jamaica, manager; Joanne Tanner, 127 Roff Avenue, Elmont; and Martin Burke, 37-06 31st Street, Jackson Heights. Miss Tanner and Burke were taken downstairs at gunpoint by both defendants



and handcuffed. Yagud, under threat, opened the vault in the office, and its contents were taken by defendants. The loot was so unexpectedly great that the suitcases brought by the bandits were insufficient, and cartons found in the bathroom had to be used to carry away the diamonds and other jewelry.

All told, 3,347 separate pieces of jewelry were taken. Recovered by the District Attorney were 2,993 pieces. District Attorney Mackell said that the question of the missing pieces is still under investigation by his office.

District Attorney Mackell was emphatic that no reward benefitting any defendant could be countenanced by his office. The District Attorney condemned the practice of some insurance and surety companies of recovering stolen property by offering rewards to fences and thieves.

The elementary economics of the practice condemned by the District Attorney shapes up in somewhat this fashion: Because of the risks inherent in the transaction, a thief is usually able to obtain from a "fence" only a small percentage of the value of the stolen article. The insurance company is in the position of being required to make good to the owner the full value of the property. By the offer of the traditional ten per cent reward, plus discreet additions for the informers, the insurance company would be able to save something less than ninety percent of the value of the stolen property. The thief, on the other hand, may receive a somewhat lesser



sum than a fence might supply, but he may be afforded assurances that no risk of criminal prosecution will be involved in his dealing with the company or its representatives.

So far as the District Attorney knows, this is the largest single recovery of stolen property in the history of criminal law enforcement. In the celebrated Brinks robbery on January 17, 1950 in Boston, only about \$98,000 of the loot was recovered. These were new bills whose recorded serial numbers made them "hot money". Six men were sentenced to life prison terms.

In the largest cash robbery in the United States, involving a U.S. mail truck in Plymouth, Mass., on August 14, 1962, \$1,551,277 was stolen but not completely recovered. The largest robbery in history of a train in Cheddington, England, northwest of London, occurred on August 8, 1963 and involved \$2 1/2 or \$7 million. Only some of the loot was recovered although a dozen men were sentenced to long prison terms.

District Attorney Mackell said that many pitiful appeals were made by persons who had lost their valuables [see APPENDIX].

District Attorney Mackell praised the conscientious work of his office in effecting the recovery, particularly Chief Assistant District Attorney Frederick J. Ludwig, Assistant District Attorney Thomas A. Demakos, Chief of the Supreme Court Bureau, and Queens Detectives under command of Captain John J. O'Connor.

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APPENDIX

FROM A FLUSHING RESIDENT:

"I HAVE BEEN VERY ANXIOUS ABOUT THE LOST ITEMS AS I INTENDED THEM FOR MY DAUGHTERS AND MY GRAND DAUGHTERS AND EVEN IF YOU REIMBURSE ME FOR THEM, IT WOULD NOT BE THE VALUE, THOUGH IT WOULD HELP. PLEASE INFORM ME AS SOON AS POSSIBLE. LETTER WRITING IS AN EFFORT FOR ME AS I HAVE A SICK HUSBAND OF ABOUT 73 AND A GRAND DAUGHTER OF 2 YEARS TO LOOK AFTER AND AT MY AGE OF 71 YEARS, IT HAS ADDED TO MY RUN-DOWN ENDURANCE."

FROM A NEW HYDE PARK WOMAN:

"THE REASON THAT I NEVER DID GET DOWN TO JAMAICA TO PAY THE INTEREST OR TAKE IT OUT WAS THAT SINCE I MADE THE LOAN I HAVE BEEN SICK WITH A HEART CONDITION AND SPENT ONE MONTH IN THE HOSPITAL WITH A SEVERE ATTACK. I DO NOT GO OUT. \* \* \* I NEEDED THE \$40.00 BADLY AND I ACCEPTED THE \$40.00 FOR ALL THOSE THINGS WITH THE INTENTION OF REDEEMING THEM SOON BUT SOON AFTER THIS I WAS STRICKEN WITH A HEART CONDITION AND SPENT A MONTH IN THE HOSPITAL WITH A SEVERE ATTACK. NOW I AM 75 YEARS OLD. MY HUSBAND IS 77 YEARS. WE ARE ON SOCIAL SECURITY AND IN BAD HEALTH. IN THE LETTER THAT WAS SENT TO ME I WAS TOLD TO NOTIFY MY INSURANCE COMPANY. WE DO NOT HAVE INSURANCE ON THESE ITEMS. THE ONLY INSURANCE WE HAVE IS SMALL AMOUNTS ON OUR LIVES. PLEASE DO SOMETHING TO RECOVER THESE ITEMS FOR ME."

FROM ANOTHER FLUSHING WOMAN:

"ONE OF THE RINGS WAS MY MOTHER'S ENGAGEMENT RING AND THE OTHER ONE WAS MY ENGAGEMENT RING. CIRCUMSTANCES FORCED ME TO TAKE A LOAN ON THEM. EACH OF THE RINGS WAS TO GO TO MY SONS. YOU CAN SEE THE SENTIMENTAL FEELING INVOLVED HERE."

"MY FATHER WORKED MANY LONG HOURS TO BUY THE RING FOR MY MOTHER AND EVEN WHEN THEY WERE MARRIED, HE WAS STILL PAYING IT OFF."

May 15, 1970.

Mr. Thomas J. Mackell,  
District Attorney,  
Queens County,  
125-01 Queens Boulevard,  
New Gardens, Jamaica, New York. 11415

Re: Thomas Palermo,  
SS-144011.

Dear Mr. Mackell:

In acknowledging your letter of April 24, 1970, regarding Thomas Palermo and another, I had hoped to be able to inform you of the Board decision at his scheduled hearing the week of April 27th. However, as you know, Mr. Palermo went out to Court April 28, 1970, on a Show Cause Order, and he was not available for his Board appearance as required. He did not return to Sing Sing until May 1st, and now has been scheduled to see the Board the week of June 2nd.

For your further information, the Board has been alerted to your interest in this case as indicated in your communication.

Thank you for writing.

Very truly yours,

Russell G. Arnold,  
Chairman.

cc: Mr. Caputo - Sing Sing

cc: Folder of Sheldon Saltzman, SS-144008

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CABLE ADDRESS "REINLAW"  
-  
COUNSEL  
SAMUEL A. BERGER

April 23, 1970

Hon. Russell G. Oswald,  
Chairman,  
New York State Board of Parole  
2 University Place  
Albany, New York 12203

Re: Thomas Palermo

FILE

Honorable Sir:

I understand that the prisoner above captioned, Thomas Palermo, is scheduled to appear before the Board of Parole in Sing Sing Prison on April 28, 1970 and I wish to bring certain facts to the Board's attention that may be helpful in determining whether and to what extent consideration should be given to him at that time.

In respect of the matter involving Palermo, we represented the Provident Loan Society of New York which, as you undoubtedly know, is a non-profit corporation created by Act of the Legislature for the purpose of making loans to persons, primarily of modest means, upon pledges of property, usually jewelry. Such profits as the Society realizes are donated to charity.

On February 17, 1969, the Jamaica, New York branch of the Society was held up and several thousand pieces of jewelry stolen. Thomas Palermo was one of two men indicted for that crime. It transpired that, on the day the crime was committed, Palermo and one other were scheduled to appear before the Supreme Court, Richmond County to stand trial for an earlier robbery for which they were later convicted and sentenced. Palermo's sentence in Richmond was for an indeterminate term not to exceed 25 years and it is upon this sentence that Palermo will appear before your Board on April 28.



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April 23, 1970

Following the Jamaica holdup, and Palermo's indictment for that crime, information came to my office to the effect that the property which had been stolen was still available. I had several meetings with Palermo leading to his promise to use his best efforts to assist in its recovery. Both the District Attorney of Queens County and the Police Department were advised of this fact and, in due course, a substantial portion of the stolen jewelry belonging to more than 2,000 residents of Queens County, was recovered and turned over to the office of District Attorney Thomas J. Mackell. Following that, as each item of jewelry was identified, it was returned to its rightful owner.

Without the active assistance of Thomas Palermo, the recovery of this enormous amount of property, whose total value is several millions of dollars, whose been effected. On the day of the recovery, Mr. Mackell asserted that he would do everything within his power to bring to the attention of the Board of Parole the help that Palermo had given in effecting this recovery and, since that time, Mr. Mackell has repeated that promise.

As evidence of Mr. Mackell's attitude toward the defendant, Palermo, upon his Queens County indictment for Robbery in the First Degree, was permitted to plead guilty to the reduced charge of Robbery in the Third Degree before Hon. Peter T. Farrell in the Supreme Court, Queens County on April 16, 1970 and, pending the imposition of sentence (scheduled for July 7, 1970) has been returned to Sing Sing Prison so that he can appear before the Parole Board on April 28. We have been assured by the District Attorney's Office that when Palermo appears for sentence before Judge Farrell in July, that office will recommend extreme leniency on his behalf by reason of his assistance in connection with the Jamaica robbery.

For Palermo's efforts in effecting the return of the property of over 2,000 Queens County residents, and assisting the Provident Loan Society in making its pledgors whole, I most earnestly and respectfully urge that the Board grant Palermo the utmost consideration and leniency when he appears before it. I would call to your attention the fact



REIN, MOUND & COTTON

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April 23, 1970

that Palermo has received no money or reward of any kind, nor any promise of money or reward for his part in the recovery. He has received, however, the promise of Mr. Mackell and myself that we would urge your Board to fix the minimum possible time that Palermo will have to serve in jail.

We understand that District Attorney Mackell will convey to your Board his opinion and recommendation to this effect.

I trust, therefore, that these facts will be brought to the attention of the members of the Board of Parole before whom Palermo will appear on April 28 and hope that the Board will act accordingly at that time.

If there are any other details or circumstances which might assist the members of the Board in making their determination, I shall be very happy to appear before them personally at such time and place as they wish.

Yours very truly,

*Manassah S. Rein*

NSR:mm

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May 15, 1970.

Rein, Mornal and Cotton,  
Counselors at Law,  
55 Pine Street,  
New York, New York. 10005

ATTENTION: Mr. Norman S. Rein.

Re: Thomas Palermo, SS-144011.

Dear Mr. Rein:

In reply to your letter of April 23, I wish to advise that Mr. Palermo was not available for his scheduled Board appearance at Sing Sing the week of April 27, 1970. He went out to Court April 28 on a Show Cause Order to Queens County and was not returned until May 5, 1970. He was rescheduled to see the Board the week of June 2, 1970. The law requires that he must appear in person for his Board hearing.

I can assure you that the Board of Parole shall be alerted to the information contained in your communication.

Thank you for writing.

Very truly yours,

Russell C. Oswald,  
Chairman.

cc: Mr. Caputo

cc: Folder of Sheldon Saltzman, SS-144003, IIS-1120703

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State of New York — Executive Department — Division of Parole

JJMcCirc

CC: Mr. Murphy  
Mr. Pomplun  
Comm. Loos  
Comm. Jones  
Case Folders  
✓BSS Name Folders  
Queens County D.A. Coop. File  
Desk  
Work

December 15, 1969

TO: Mr. Baker - Central Office

FROM: Mr. McCarthy - Bureau of Special Services

RE: Thomas Palermo SS-144011 IIS-716442  
Sheldon Saltzman SS-144008 IIS-1120708

COOPERATIVE INVESTIGATION WITH QUEENS COUNTY DISTRICT ATTORNEY  
CONCERNING 2/17/69 ROBBERY OF THE PROVIDENT LOAN SOCIETY

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EFFORTS MADE BY PALERMO-SALTZMAN ATTORNEY, EDWARD BOBBICK  
AND PROVIDENT LOAN ATTORNEYS, EUGENE A. LEITMAN-ARTHUR N. BROOK  
AND NORMAN S. REIN, TOWARDS MANIPULATING THIS AGENCY ON BEHALF  
OF PALERMO AND SALTZMAN

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On September 24, 1969, Detective James Caparell, New York City Police Department, specially assigned to the Queens District Attorney's Office, specifically to the Office of Frederick J. Ludwig, Chief Assistant District Attorney, telephoned the writer requesting what consideration might be shown to an inmate who had cooperated in the solution of a serious crime. At that time Detective Caparell was vague as to ident, and it was not until several days later that the writer was able to ascertain that Detective Caparell was referring to Palermo and Saltzman. Detective Caparell was informed that no interpretation could be made without all particulars being known. On September 25, 1969, after Palermo's ident had been established, Detective Caparell again communicated



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with the writer, advising that the Queens District Attorney's Office was conducting a major investigation and was making intensive efforts towards recovering the proceeds of the Provident Loan Society Robbery; that between four and eight million dollars worth of jewelry was involved; that 2200 people had lost their life's savings, etc., etc., (parenthetically, that by virtue of his office, Governor Rockefeller is Chairman of the Board of Trustees of the Provident Loan Society), and that Attorney, Edward Bobbick had been negotiating with the Queens District Attorney demanding leniency for his clients, Palermo and Saltzman, insisting that the robbery proceeds would be returned in full should his, Bobbick's terms be met. Bobbick's demands were, according to Detective Caparell --

1. Immediate parole on the Staten Island case, subject to the return of the property.
2. Palermo, arrested with Sheldon Saltzman, B-705782, IIS-120708, will plead guilty to the Queens case and sentencing to be postponed until 1970.
3. Palermo will return the property.
4. Failure to return the property will constitute violation of No. 1.

The writer requested that Attorney Bobbick's demands be reduced to writing and forwarded to this agency and then, in the strongest possible terms, Detective Caparell was informed that Bobbick's demands were presumptuous, preposterous and completely out of order. It was further pointed out to Detective Caparell that at this juncture, control of the case is entirely in the hands of the Queens County Authorities and that the matter of leniency and/or consideration should appropriately be handled there and not here.

It was further ascertained that attorneys for the Provident Loan Society had been in contact with Attorney Bobbick and with the Queens County District Attorney's Office, that some negotiations had occurred, that the primary concern was recovery, that Queens County Authorities had a "solid case against Palermo and Saltzman, but if the deal goes through he, Palermo, will get a suspended sentence. ...Staten Island wants no part of anything".

An effort made to ascertain information concerning other criminal activities on the part of Palermo and Saltzman was unproductive at this juncture. Detective Caparell at one point opined that they may have "another small case upstate". Inference here was obviously to the Yonkers House Robbery perpetrated by Palermo and Saltzman wherein, after an initial positive ident, witnesses wavered in court and declined to identify. This, according to authorities, was solely attributable to



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intimidation of the witnesses. Subjectively, this could hardly be categorized as "a small case":

On September 24, 1969, Detective Caparell telephoned from the Queens County District Attorney's Office, inquiring as to what legal authority the Board of Parole had in a situation wherein full recovery was made, where the individuals were already under sentence on a separate charge, etc., etc. At this moment the writer learned that Detective Caparell was speaking in the presence of Attorney Bobbick and the writer abruptly ended the conversation after informing Detective Caparell that it was most inappropriate for him to conduct such a conversation in the presence of the Palermo-Saltzman lawyer. Later, after the writer was assured that Attorney Bobbick was not present, the writer informed Detective Caparell, unequivocally and categorically, that the Board of Parole would in no way whatsoever be a part of any negotiations of this nature; further more, that the Queens County Authorities themselves were empowered to place appropriate pressure towards recovery in view of that agency's 'solid' case against the pair. In every subsequent conversation with Detective Caparell, this point was repeatedly emphasized.

In an interview with Commissioner Jones on October 10, 1969, in the New York Office, Provident Loan Society Attorneys Leiman and Brook were similarly informed by Commissioner Jones. Attorney Leiman was extremely vague when asked a direct question as to whether or not a reward was being paid for recovery.

In a telephone conversation with Chief Prosecutor Ludwig concerning the Provident Loan Robbery, the writer characterized Palermo and Saltzman for the Prosecutor's benefit, emphasizing the series of violent crimes in which this pair had been involved in a comparatively brief period, and indicating that it was clearly evident that these offenders were not entitled to consideration of any type whatsoever by any agency. ADA Ludwig expressed his agreement and added that this case reminded him of the Jack 'Murf the Surf' Murphy Robbery of the American Museum of Natural History (Star of India Jewel, the famed DeLong Ruby, etc.) where, after restitution, leniency had been recommended and extended. Murphy subsequently perpetrated a gangland killing in Florida for which he was convicted and is now serving Life in that State.

#### RECOVERY OF STOLEN JEWELRY:

On October 25, 1969 Queens County District Attorney Thomas Mackell announced the recovery of the jewels stolen from the Provident Loan Society on February 17, 1969. In a press release, Mr. Mackell reported that "the stolen diamonds and jewelry were actually valued at \$4 million --- the loan value \$545,984 --- nearly all of the jewelry was uninsured --- that this was the largest recovery of stolen property in the history of law enforcement". The press release further related that "District



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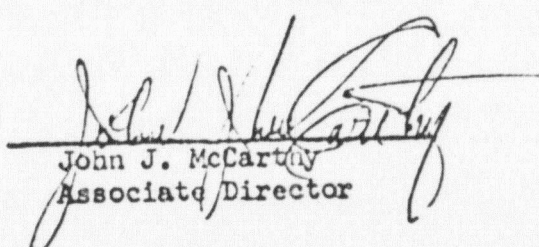
Attorney Mackell was emphatic that no reward benefitting any defendant could be countenanced by his office. The District Attorney condemned the practice of some insurance and surety companies of recovering stolen property by offering rewards to fences and thieves".

On October 27, 1969 Detective Caparell informed the writer that through Palermo the Police had been lead to the cache of stolen jewels and diamonds.

On December 17, 1969 Detective Caparell telephoned the writer, advising that his office - also the Palermo-Saltzman attorney, Edward Bobbick and the attorneys for the Provident Loan Society, "want to know" what disposition will be made in the Palermo-Saltzman situation. On being questioned as to the actual meaning of his inquiry, Detective Caparell referred to "an agreement by Mr. Mackell that he would speak to the Parole Board recommending that Palermo and Saltzman be given consideration". He further added that Chief Assistant District Attorney Frederick Ludwig would like to know the answers to the following three questions:

1. Is Palermo scheduled to appear before the Board of Parole?
2. In order to be scheduled for a hearing, does Palermo have to be back in the institution?
3. How will open indictments against Palermo affect his appearance date before the Board of Parole?

Detective Caparell asserted that it appears clear that Palermo and Saltzman are to be accorded leniency in Queens County because of Palermo's part in the recovery of the Provident Loan case. The writer informed him that the record clearly indicates that at no time whatsoever in this entire investigation was any commitment made by any member of the Board of Parole or by any member of this Agency regarding leniency. Both Palermo and Saltzman were once again characterized for what they are, according to the record, extremely dangerous, violence-prone offenders, whose presence in the community will always represent a menace to society.

  
John J. McCarthy  
Associate Director

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STATE OF NEW YORK )  
COUNTY OF NEW YORK ) : SS.:

RALPH M. MURRY

, being duly sworn, deposes and says that he is employed in the office of the Attorney General of the State of New York, attorney for ~~respondent~~, ~~defendant~~, ~~applicant~~ herein. On the 30<sup>th</sup> day of June, 1976, he served the annexed upon the following named person :

Attorney in the within entitled by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by them for that purpose.

Sworn to before me this  
30<sup>th</sup> day of June, 1976

Margery Evans Reader  
Assistant Attorney General  
of the State of New York

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